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DEPARTMENT OF LABOR

Veterans' Employment and Training Service

20 CFR Part 1011

[Docket No. VETS-2017-0001]

RIN 1293-AA21

HIRE Vets Medallion Program

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: VETS is publishing this Notice of Proposed Rulemaking (NPRM) to propose regulations implementing the Honoring Investments in Recruiting and Employing (HIRE) American Military Veterans Act of 2017 (HIRE Vets Act of 2017 or Act). The HIRE Vets Act requires the Department of Labor (DOL, Department) to annually solicit and accept voluntary information from employers for consideration of employers to receive a HIRE Vets Medallion Award. VETS will review applications and notify recipients of their awards, and announce their names at a time that coincides with Veterans' Day. The Act establishes specific criteria at two levels, "gold" and "platinum," for large employers (those with 500 or more employees) and allows the Department of Labor discretion in establishing additional criteria for each large employer award level and criteria for small and medium employers to qualify for similar awards. The NPRM proposes the application process and criteria that VETS intends to use to receive, review, and process applications; verify the information provided; and award the HIRE Vets Medallion Award to those employers meeting the criteria and deserving of the award.

The Act establishes a fund, designated as the “HIRE Vets Medallion Award Fund” and requires the Secretary to assess a reasonable fee from the applicants to cover the costs associated with carrying out the HIRE Vets Medallion Award program. The NPRM provides the fee amount and how to submit the fee. These awards are intended to recognize employer efforts to recruit, employ, and retain our Nation’s veterans.

DATES: To be assured of consideration, comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by RIN number 1293-AA21, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the website instructions for sending comments; or

Mail or Hand Delivery Courier: Please submit all written comments (including disk and CD-ROM submissions) by hand delivery, express mail, messenger, or courier service to: Randall Smith, Veterans’ Employment and Training Service, U.S. Department of Labor, Room S-1325, 200 Constitution Avenue NW, Washington, DC 20210.

Please submit your comments by only one method. Comments received by means other than those listed above or received after the comment period has closed will not be reviewed. VETS will post all comments received on <http://www.regulations.gov> without making any change to the comments, including any personal information provided. The <http://www.regulations.gov> website is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. VETS cautions commenters not to include personal information such as Social Security Numbers, personal addresses, telephone numbers, and email

addresses in their comments as such information will become viewable by the public on the <http://www.regulations.gov> website. It is the commenter's responsibility to safeguard his or her information. Comments submitted through <http://www.regulations.gov> will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, VETS encourages the public to submit comments through the <http://www.regulations.gov> website.

Comments concerning information collection requirements should be directed to: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Veterans' Employment and Training Service, Office of Management and Budget, Room 10235, Washington, DC 20503, fax: (202) 395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov. Please submit your comments by only one method. Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning VETS at (202) 693-4700 or TTY (877) 889-5627 (these are not toll-free numbers).

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at <http://www.regulations.gov>. VETS will also make all the comments received available for public inspection during normal business hours, 8:15 a.m. to 4:45 p.m. at: Room S-1325, 200 Constitution Avenue NW, Washington, DC 20210. If you need assistance to review the comments, VETS will provide you with appropriate aids such as readers or print magnifiers. VETS will make copies of the rule available, upon request, in large

print and as an electronic file on computer disk. VETS will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or to obtain this NPRM in an alternate format, please contact VETS at the address listed above or at (202) 693-4700 or TTY (877) 889-5627 (these are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Contact Randall Smith, Veterans'

Employment and Training Service, U.S. Department of Labor, Room S-1325, 200 Constitution Avenue NW, Washington, DC 20210, *email:* HIREVETS.NPRM@dol.gov, *telephone:* (202) 693-4700 or TTY (877) 889-5627 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The HIRE Vets Act was enacted on May 5, 2017, as Division O of the Consolidated Appropriations Act, 2017, Pub. L. 115-31. The purpose of the Act is to create a voluntary program for recognizing efforts by employers to recruit, employ, and retain veterans through a HIRE Vets Medallion Award (the award). The Act requires the Department of Labor to issue regulations establishing the HIRE Vets Medallion Program (Medallion Program).

In preparation for drafting a rule to implement the Act, VETS conducted three stakeholder sessions during the week of June 5, 2017. During these stakeholder sessions, VETS obtained input from large, medium, and small employers, veterans service organizations, military service organizations, and other interested parties. The Department of Labor invites comments on this proposed rule by all interested parties.

Section-by-Section Analysis

Subpart A—Introduction to the Regulations for the HIRE Vets Act

Section 1011.000: What is the HIRE Vets Medallion Program?

Proposed §1011.000 provides a description of the goals and purposes of the Medallion Program. This language is derived from the language in sec. 2(a) of the Act, which states that the HIRE Vets Medallion Program is a program through which the Department of Labor will solicit voluntary applications from employers for the award.

Section 1011.005: What definitions apply to the Medallion Program Regulations?

Proposed §1011.005 contains proposed definitions for this part. Each definition is discussed individually below.

Active Duty: The definition of “active duty” relates to the pay differential criterion used for the large employer, medium employer, and small employer awards in proposed §§1011.000(b)(8), 1011.105(b)(5)(ii), and 1011.110(b)(4)(iv). To satisfy this criterion, employers must provide employees serving on active duty in the United States National Guard or Reserve with compensation that is sufficient, in combination with the employee’s active duty pay, to achieve a combined level of income commensurate with the employee’s salary prior to undertaking active duty. To ensure simplicity, the proposed rule’s definition of active duty is consistent with the definition used at 10 U.S.C. 101(d)(1) (defining active duty for purposes of the armed forces). However, VETS requests comments on whether this definition is appropriate for this program.

Dedicated Human Resources Professional: The term “dedicated human resources professional” is used in the human resources criterion for the large employer platinum award established in sec. 3(b)(1)(C)(iv) of the Act and implemented in proposed §1011.100(b)(7). This proposed definition clarifies that to satisfy this criterion, an employer may either employ an individual who devotes 100 percent of their time to supporting the hiring, training, and retention of veteran employees (for purposes of this rule, “veteran employees” refers to

employees who are veterans) or the equivalent of a full-time employee. For example, three full-time employees who devote fifty percent, thirty percent, and twenty percent of their time, respectively, to supporting the hiring, training, and retention of veteran employees would satisfy this criterion. Any other combination of time dedicated to this objective that equals one full-time employee would also satisfy this criterion. Because most human resources professionals do not dedicate all of their time to a single objective, this clarification will retain flexibility for employers while also ensuring that veteran employees receive sufficient human resources support.

Additionally, this definition does not require that the human resources professionals be employees of the applicant. An applicant can satisfy this criterion by contracting out these services so long as those contracted services otherwise meet this definition.

Finally, as with the Human Resources Veterans' Initiative, the Dedicated Human Resources Professional must provide support in all three of the following areas: hiring, training, and retention.

Employee: The proposed rule defines “employee” as any individual for whom the employer furnishes an IRS Form W-2, with the exception of temporary workers. Although many other definitions of employee exist in Federal law, most of those definitions are for purposes of enforcing Federal protections. For the purposes of the Medallion Program, VETS will defer to how an employer categorizes its workers for tax purposes. This definition simplifies the burden on employers in assessing whether they meet the award criteria.

The proposed definition of “employee” includes both permanent full-time and permanent part-time employees. Permanent part-time employees are included in addition to permanent full-time employees because many disabled veterans rely on part-time positions and

because basing the award on calculations of all permanent employees seems a more accurate reflection of veteran employment.

Although VETS supports the hiring of veterans in all positions, including temporary positions, the proposed rule excludes temporary workers from the definition of employee. The proposed rule has this exclusion because of the retention criterion for large employers, which requires that certain veteran employees be retained for at least twelve months. The inclusion of temporary workers in the definition of employee would thus foreclose employers and industries that hire large numbers of temporary workers from consideration for the award. Instead, this exclusion ensures that employers that retain a large percentage of veterans in permanent positions are not excluded simply because of the fact that some of their business is seasonal in nature.

Additionally, although the proposed regulation does not explicitly exempt workers who work outside of the United States from the definition of employee, tying the definition of employee to the IRS Form W-2 effectively excludes workers outside of the United States from the definition of employee, unless those workers are U.S. citizens or permanent residents, because those workers do not receive IRS Form W-2s. The proposed rule excludes most workers who work outside of the United States (other than those noted in the previous sentence) from the definition of employee because it does not seem reasonable to measure employment of veterans by including workers not in the United States and the inclusion of such workers may make it difficult for otherwise meritorious employers to satisfy the veteran hiring and retention criteria. However, the proposed rule does not exclude those U.S. citizens or permanent residents who might work outside of the United States and still receive an IRS Form W-2 in

order to limit the amount of analysis employers must go through in assessing their employee population for the purposes of this rule.

Employer: The proposed definition of “employer” derives from the definition at sec. 8(a) of the Act. In addition to including the statutory language, the definition of “employer” clarifies that VETS will distinguish employers based on their Employer Identification Numbers, as described by the IRS in their regulations implementing 26 U.S.C. 6109 at 26 CFR 301.7701-12. In drafting this definition, VETS evaluated how to incorporate franchises, subsidiaries, and retail branches into the definition of employer. VETS settled on the proposed definition because it is the simplest definition for employers to implement and is reflective of how employers define themselves. However, the proposed rule creates an exemption from this definition where an IRS-recognized third party furnishes an employee’s IRS Form W-2 pursuant to 26 CFR 31.3504-1, 26 CFR 31.3504-2, or 26 U.S.C. 7705. This exemption is to ensure that deserving employers are not barred from an award because they have used one of the mechanisms identified in the previous sentence.

The definition of employer includes local governments and tribal governments. However, VETS proposes to exclude foreign governments from the definition of employer. VETS makes this proposal to avoid any apparent conflict that could occur as a result of granting a foreign government an award.

This definition also allows an independently owned franchise or a subsidiary to apply for its own award.

VETS requests comments on whether this is an appropriate definition of employer.

Human Resources Veterans’ Initiative: This proposed definition applies to the small employer and medium employer award criteria at proposed §§1011.105(b)(5)(i) and

1011.110(b)(4)(iii). This criterion is a variation on the dedicated human resources professional criterion for the large employer platinum award. Instead of needing to employ a dedicated human resources professional (as defined above), an employer satisfies the human resources veterans' initiative criterion if the employer provides hiring, training, and retention support for veteran employees. Employers must provide support in all three of these areas. An employer would not satisfy this criterion if it only provided support in one or two of these areas. This adjusted definition recognizes that not all small and medium employers will employ dedicated human resources professionals.

Additionally, this definition does not require that this support be provided by employees of the applicant. An applicant can satisfy this criterion by contracting out or partnering with a third-party that provides this support so long as the support provided otherwise meets this definition. One way an employer may satisfy the hiring support portion of the human resources veterans' initiative criterion is by partnering with an American Job Center that is part of the nationwide workforce development system as defined in Section 3(67) of the Workforce Innovation and Opportunity Act.

Post-Secondary Education: The term "post-secondary education" is used in the tuition assistance program criterion established for large employers in sec. 3(b)(1)(C)(vi) of the Act. To satisfy this criterion, an employer must have a tuition assistance program to support employees' attendance in post-secondary education during the term of their employment. The proposed definition of "post-secondary education" is consistent with the definition of "program of education" in the G.I. Bill (38 U.S.C. 2002), but it is simplified to provide clear guidance for employers to use as they apply for the award. Under the proposed definition, any tuition assistance program that supports employees' attendance in post-secondary courses, including

courses that lead to an associates or bachelor's degree or higher; a recognized post-secondary credential; or an apprenticeship would be acceptable.

Salary: The proposed rule defines “salary” as an employee’s base pay. The definition of salary relates to the pay differential criterion used for the large employer, medium employer, and small employer awards in proposed §§1011.100(b)(8), 1011.105(b)(5)(ii), and 1011.110(b)(4)(iv). VETS proposes to use base pay to define salary because base pay is the standard measure for pay differential. However, VETS seeks comments on whether any of the following should also be included in the definition of salary: overtime, shift differential, bonuses, tips, commissions, vacation and holiday pay, retirement and other related benefits, stock options and awards, profit sharing, etc.

The proposed definition of “salary” does not set a specific formula for determining salary. Because this is an awards program, the method for calculating salary can be determined by the employer so long as that determination is reasonable and applied consistently across all employees. For example, it might be reasonable for an employer to determine an employee’s salary by using the employee’s annual salary associated with their job description. It might also be reasonable for an employer to determine an employee’s salary by looking at an employee’s average wages over the course of several months prior to the employee’s active duty. However, it would likely be unreasonable for an employer to use an employee’s wages from a pay period in which the employee spent much of the pay period on unpaid leave.

Temporary worker: The proposed definition of “temporary worker” provides additional clarity as to which non-permanent employees are excluded from the definition of employee. This proposed definition states that temporary workers are those who are hired with the intention that they be retained for less than a year and who actually are retained for less than a

year. A worker retained for more than a year is considered an employee for the purposes of this regulation so long as that worker meets the rest of the requirements to qualify as an employee.

Veteran: The proposed definition of “veteran” is the statutory definition of veteran in sec. 8(c) of the Act. VETS recognizes that most employers determine which employees are veterans according to the employee’s self-identification. VETS does not expect employers to change these practices in order to guarantee that every employee who self-identifies as a veteran meets the definition of veteran set out in this proposed section and in the Act. VETS’ primary concern is that an employer applying for an award informs VETS as accurately as it is reasonably able to as to the number of veterans that it employs.

Additionally, consistent with the definition of veteran at 38 U.S.C. 101, the term is limited to veterans of the U.S. Armed Forces. Consequently, veterans who served in foreign militaries do not come within the definition of veteran for the purpose of determining whether an employer qualifies for a HIRE Vets Medallion Award.

VETS: This term is defined for clarity. This term refers to the Veterans’ Employment Training Service of the Department of Labor.

Section 1011.010: Who is eligible to apply for a HIRE Vets Medallion Award?

Proposed §1011.010 defines the entities that are eligible to apply for an award. An employer that employs at least one employee may qualify for an award so long as the employer satisfies all of the criteria and application requirements under this part.

Section 1011.015: What are the different types of the HIRE Vets Medallion Awards?

Proposed §1011.015 describes the different types of HIRE Vets Medallion Awards for which an employer may apply.

Paragraph (a) describes the three different employer size award categories. This paragraph implements the language at secs. 3(b)(1)(A) & 3(b)(2) of the Act, which define the employer size requirements for each category of award. Paragraph (a)(4) clarifies that the correct category of award for which an employer is eligible is determined by the employer's number of employees as of December 31 of the year prior to the year in which the employer applies for a HIRE Vets Medallion Award. For the purposes of this section, employee is defined as described in §1011.005.

Paragraph (b) establishes the different levels of award within each category. The Act provided for these levels for the large employer awards in sec. 3(b)(1)(B)-(C). Sec. 3(b)(2) of the Act also requires VETS to establish "similar awards" for the small and medium employers. Consequently, the proposed regulations employ the gold and platinum distinctions for the small and medium employers.

Subpart B—Award Criteria

The proposed rule provides specific award criteria for the large employer gold and platinum awards. Although the number of criteria an employer is required to satisfy in the proposed rule differs by award, the large employer criteria established by statute are generally incorporated across the large employer, medium employer, and small employer awards. Consequently, this introduction to Subpart B will describe the criteria generally. The preamble for the specific award provisions at proposed §§1011.100, 1011.105, 1011.110 will describe the extent to which any of the criteria differ for the purposes of a particular award.

Hiring Criterion: In sec. 3(b)(1)(B)(i), the Act requires that veterans constitute not less than 7 percent of all employees hired during the prior calendar year for the large employer gold

award. Sec. 3(b)(1)(C)(ii) similarly establishes a 10 percent hiring requirement for a large employer platinum award.

The Act is clear that employers cannot satisfy this criterion by rounding up. The percentage of employees hired in the prior calendar year must be not less than the required percentage. Consequently, even if 6.99 percent of a large employer's new hires for the prior calendar year were veterans, the employer would not qualify for the large employer gold award. Likewise, 9.99 percent would not qualify a large employer for the large employer platinum award.

Retention Criterion: The Act also establishes a retention criterion for the large employer awards. For the large employer gold award, sec. 3(b)(1)(B)(ii) of the Act requires employers to have retained not less than 75 percent of the veteran employees hired during the calendar year preceding the preceding calendar year for a period of at least 12 months from the date on which the employees were hired in order to be eligible for the award. Sec. 3(b)(1)(C)(iii) of the Act makes this an 85 percent requirement for the large employer platinum award.

This language is somewhat complex; consequently, this preamble offers an example of the application of this criterion for an application that is submitted in 2020 for a large employer gold award. To satisfy the retention criterion, the employer applying in 2020 will need to look at all of the veteran employees it hired in 2018. If 75 percent of those veteran employees hired in 2018 were retained for at least 12 months from the date of hire, then the employer satisfies this criterion.

As with the hiring criterion, the retention criterion contains the term "not less than." Consequently, a retention percentage of 74.99 would not satisfy the large employer gold

criterion, and a retention percentage of 84.99 would not satisfy the large employer platinum criterion.

Employee Veteran Organization or Resource Group Criterion: Sec. 3(b)(1)(B)(iii) of the Act sets out a criterion that requires employers to have established an employee veteran organization or resource group to assist new veteran employees with integration, including coaching and mentoring. Per the language of the statute, this must be a distinct organization or group. Although admirable, an employer would not satisfy this criterion if the employer provided coaching and mentoring to veteran employees but did so without having established an organization or group. Additionally, the organization or group must still be in existence as of December 31 of the year prior to the calendar year in which the employer applies for the award. For example, if an employer applies for an award in 2020, the organization or group must still be in existence on December 31, 2019.

Leadership Program Criterion: The Act also sets out a leadership program criterion at sec. 3(b)(1)(B)(iv). To satisfy the leadership program criterion, employers must have established programs to enhance the leadership skills of veteran employees during their employment. A leadership program does not need to be provided exclusively to veterans in order to satisfy this criterion. For example, an employer could satisfy this criterion by offering a program to enhance leadership skills to all employees as long as veteran employees may participate. The primary concern for this criterion is that veterans have the opportunity to enhance their leadership skills and not that such programs only benefit veterans.

As with the employee veteran organization or resource group criterion, the leadership program must be in existence as of December 31, of the year prior to the calendar year in which the employer applies for the award.

Human Resources Criteria: Sec. 3(b)(1)(C)(iv) of the Act establishes a criterion related to human resources support for veterans. Unlike the previous criteria, the human resources requirements vary based on the size of employer. Requirements for the human resources criteria are discussed in additional detail in the introduction to the small employer and medium employer award criteria.

Pay Differential Criterion: The Act also sets out a pay differential criterion in sec. 3(b)(1)(C)(v). To satisfy this criterion, employers must provide each of its employees serving on active duty in the United States National Guard or Reserve with compensation sufficient, in combination with the employee's active duty pay, to achieve a combined level of income commensurate with the employee's salary prior to undertaking active duty. This criterion contains a couple of key terms—active duty and salary—that are defined in proposed §1011.005 and explained in the corresponding definitions preamble text.

Additionally, VETS requests comments on whether to establish a minimum amount of time that an employer must provide the pay differential in order to satisfy the criterion. Currently, the proposed regulation offers no minimum, which means that the employer must provide the differential for as long as the employee is on active duty.

Tuition Assistance Program Criterion: Finally, the Act at sec. 3(b)(1)(C)(vi) includes a criterion that requires an employer to establish a tuition assistance program to support veteran employees' attendance in post-secondary education during the term of their employment. As with the leadership program criterion, this benefit need not be exclusively for veteran employees as long as veteran employees are able to benefit from it. Additionally, this assistance may take many forms, including financial assistance, leave assistance, or discounts on postsecondary education. Postsecondary education is defined in §1011.005.

Other Criteria: In addition to the criteria established by the Act for large employers, sec. 3(b)(1)(E) permits the VETS to establish additional criteria. As discussed in the preamble for proposed §1011.120, VETS has established an additional criterion regarding veteran-specific labor violations. VETS requests comments on what other criteria it should establish, such as criteria connecting employers to the workforce development system.

Section 1011.100: What are the criteria for the large employer HIRE Vets Medallion Award?

Proposed §1011.100 sets out the criteria for the large employer awards as established in sec. 3(b)(1)(B)-(C) of the Act. These criteria are described in greater detail in the introduction to this subpart.

Paragraph (a)(1) implements sec. 3(b)(1)(A) of the Act, which states the size requirements for the large employer award.

Paragraph (a)(2) includes the criterion, further explained in proposed §1011.120, that employers are not eligible for an award if they have violated certain labor protections.

Paragraphs (a)(3)-(6) implement the additional criteria for the large employer gold award at sec. 3(b)(1)(B) of the Act.

Paragraph (b) sets out the requirements for the large employer platinum award.

As with paragraph (a)(1), paragraph (b)(1) implements sec. 3(b)(1)(A) of the Act, which states the size requirements for the large employer award.

Paragraph (b)(2), as with paragraph (a)(2), includes the criterion, further explained in proposed §1011.120, that employers are not eligible for an award if they have violated certain labor protections.

Paragraphs (b)(3)-(b)(6) set out the large employer gold criteria in section 3(b)(1)(B) of the Act that also apply to the large employer platinum criteria per sec. 3(b)(1)(C)(i).

Paragraph (b)(7) implements the dedicated human resources professional criterion at sec. 3(b)(1)(C)(iv) of the Act. “Dedicated human resources professional” is further explained in proposed §1011.005 (the definitions section) and the accompanying preamble text.

Additionally, as further explained in proposed §1011.115, there is an exemption for employers with 5,000 or fewer employees.

Paragraphs (b)(8) and (b)(9) set out the criteria at sec. 3(b)(1)(C)(v)-(vi) of the Act.

Small and Medium Employer Awards

Sec. 3(b)(2) of the HIRE Vets Act authorizes VETS to establish criteria for small and medium employers. In examining which criteria should apply to the awards for small and medium employers, this proposed rule attempts to balance two sometimes conflicting objectives. First, this rule seeks to ensure simplicity by keeping unique criteria for which employers must familiarize themselves to a minimum. Second, the proposed rule attempts to take into account the potentially different structures and resources of small and medium employers.

In balancing these objectives, the proposed rule adopts most of the large employer criteria for the small and medium employer awards, but the criteria for small and medium employers differ in three fundamental ways.

First, instead of requiring the small and medium employers to meet all of the criteria outlined for the large employers, the criteria for the small and medium employers include more options and alternatives. For example, employers applying for the small platinum award need only have two of the five forms of integration assistance identified for the large employer platinum award. Likewise, instead of needing to meet both the hiring criterion and the retention

criterion, small and medium employers must meet either the hiring criterion or a criterion that includes retention and veteran employee percentage.

The second major difference is the inclusion of this “veteran employee percentage” criterion for the small and medium employers. For small and medium employers who might not meet the hiring criterion, they may qualify for an award if they meet the retention requirements and if a certain percentage (7 percent for the gold and 10 percent for the platinum) of the employer’s employees during the last year were veterans. The proposed rule includes this option to allow small and medium employers who did not hire last year, but demonstrated their commitment to veteran employment by hiring the year before, to receive a medallion for their longer term veteran hiring efforts.

This proposed veteran employee percentage criterion is required in addition to the retention criterion to ensure that the employer has provided a commitment to veteran employment. Because small and medium employers have the choice between meeting the hiring criterion or the retention criterion, if the percentage of veteran employees criterion was not added to the retention criterion, an employer with 499 employees could qualify for an award even if it only had a single veteran employee (so long as it had hired that veteran employee two years ago and had retained that veteran employee for at least twelve months). The addition of the veteran employee percentage criterion ensures employers are making substantive efforts to employ veterans even if they do not meet the hiring criterion. The veteran employee percentage criterion uses 7 percent as the minimum requirement for the gold award and 10 percent for the platinum. These percentages were selected to reflect the requirements of the hiring criterion. VETS requests comments on whether a small or medium employer that meets the other criteria but does not meet the hiring or retention criteria should receive an award if that employer meets

the veteran employee percentage test. The Department also requests comments on whether percentages other than 7 and 10 should be used for this criterion.

The proposed rule also establishes that to measure this veteran employee percentage criterion, an employer must use a snapshot analysis of what percentage of its employees were veterans on December 31 of the year prior to the year in which the employer applies for the award. VETS also requests comments on whether a snapshot on December 31 is an appropriate way to measure this criterion.

Finally, the human resources criterion for small and medium employer awards differs from the human resources criterion for the large employer awards. Small and medium employers often do not have the same human resource support as large employers. Consequently, under this proposed rule, small and medium employers are instead required to meet a similar requirement of providing hiring, training, and retention services for veteran employees. This is further described in the definition of “human resources veterans’ initiative” at proposed §1011.005.

Section 1011.105: What are the criteria for the medium employer HIRE Vets Medallion Award?

Proposed §1011.105 sets out the criteria for the medium employer gold and platinum awards. Paragraph (a) contains the requirements for the medium employer gold award and paragraph (b) contains the requirements for the medium employer platinum award.

Paragraph (a)(1) implements sec. 3(b)(2)(B) of the Act, which states that the medium employer award is for employers with more than 50 but fewer than 500 employees.

Paragraph (a)(2) includes the criterion, further explained in proposed §1011.120, that employers are not eligible for an award if they have violated certain labor protections.

Paragraph (a)(3) sets out a criterion with two alternatives. To satisfy this criterion, employers must meet at least one of the two alternative criteria: the hiring criterion or the retention plus veteran employee percentage criterion. So long as the employer meets at least one of the two alternative criteria, it need not meet the other.

Paragraph (a)(4) sets out another criterion with alternatives. This criterion is similar to the large employer gold award criteria in that it includes both forms of integration assistance included in the large employer gold award. However, unlike with the large employer gold award, medium employers applying for the gold award need only have one of the two forms of integration assistance: either an employee veteran organization/resource group or a leadership program; the medium employer need not have both to satisfy this criterion. However, VETS requests comments as to rather the employer should be required to meet both of these requirements for the medium employer gold award.

Paragraphs (b)(1)-(5) set out the requirements for the medium employer platinum award. Paragraphs (b)(1)-(3) are the same requirements that paragraphs (a)(1)-(3) establish for the medium employer gold award. However, the percentages in paragraph (b)(3) are higher than those at (a)(3) to reflect the higher standard to which platinum applicants will be held. Paragraph (b)(4) is similar to the medium employer gold integration assistance requirements in paragraph (a)(4). However, paragraph (b)(4) requires the employer to have both an employee veteran organization/resource group and a leadership program. This difference also reflects the fact that recipients of the platinum awards should be held to a higher standard.

Paragraph (b)(5) is an additional requirement that distinguishes the medium employer platinum award from the medium employer gold award. Paragraph (b)(5) requires that applicants for the medium employer platinum award must also offer one of the forms of

integration assistance required for the large employer platinum award. By allowing applicants for the medium employer platinum award to choose between the various forms of integration assistance that qualify an employer for the large employer platinum award, the proposed rule recognizes that medium employers will likely not have as many resources as large employers. However, by still requiring applicants for the medium employer platinum award to provide at least one of these forms of integration assistance, the proposed rule ensures that the prestige of the medium employer platinum award is commensurate with that of the large employer platinum award.

Section 1011.110: What are the criteria for the small employer HIRE Vets Medallion Award?

Proposed §1011.110 sets out the criteria for the small employer gold and platinum awards. Paragraph (a) contains the requirements for the small employer gold award and paragraph (b) contains the requirements for the small employer platinum award.

Paragraph (a)(1) implements sec. 3(b)(2)(A) of the Act, which states that the small employer award is for employers with 50 or fewer employees.

Paragraph (a)(2) includes the criterion, further explained in §1011.120, that employers are not eligible for an award if they have violated certain labor protections.

Paragraph (a)(3) sets out a criterion with two alternatives. To satisfy this criterion, employers must meet at least one of the two alternative criteria: the hiring criteria or the retention plus veteran employee percentage criteria. So long as the employer meets at least one of the two alternative criteria, it need not meet the other.

Paragraphs (b)(1)-(4) set out the requirements for the small employer platinum award.

Paragraphs (b)(1)-(3) are the same requirements that paragraphs (a)(1)-(3) establish for the small employer gold award. However, the percentages in paragraph (b)(3) are higher than

those at (a)(3) to reflect the higher standard to which platinum applicants will be held.

Paragraph (b)(4) is an additional requirement that distinguishes the small employer platinum award from the small employer gold award. This criterion requires that an employer have at least two of the five forms of integration assistance identified for the large employer platinum award. This proposal allows small employers to have additional flexibility in recognition of the differences in their resources and structure from large employers while also ensuring that recipients of the platinum award are held to a high standard in providing support for their veteran employees.

Section 1011.115: Is there an exemption for certain large employers from the dedicated human resources professional criterion for the large employer platinum HIRE Vets Medallion Award?

Proposed §1011.115 implements sec. 3(b)(1)(D) of the Act, which provides an exemption for large employers who employ 5,000 or fewer employees from needing to satisfy the full-time dedicated human resources professional criterion for the large employer platinum award that is set out in §1011.100(b)(7) of this proposed rule. For additional information on how this regulation defines “dedicated human resources professional,” please see the definitions section of this proposed rule at §1011.005 and accompanying preamble.

Section 1011.120: Under what circumstances will VETS find an employer ineligible to receive a HIRE Vets Medallion Award for a violation of labor law?

Proposed §1011.120 outlines the circumstances that would disqualify or delay an employer from receiving a HIRE Vets Medallion Award. The HIRE Vets Medallion Award recognizes those employers that recruit, employ, and retain veterans. Consistent with this goal, VETS proposes to disqualify from consideration those employers that have incurred violations under labor laws protecting veterans as administered by, or in conjunction with, VETS and the

Office of Federal Contract Compliance Programs (OFCCP). Additionally, VETS proposes that employers debarred from holding federal contracts pursuant to the laws identified in this section would also be ineligible for the duration of the debarment, as would employers that, pursuant to the laws identified in this section, have had contracts terminated within a specified period of time prior to the issuance of an award. Finally, §1011.120 would provide VETS with the discretion to delay the issuance of an award if it has information indicating that a significant violation of one of these laws has occurred that could lead to one of the disqualifying events discussed above.

Proposed paragraph (a) of this section provides that any employer with an adverse labor law decision, stipulated agreement, contract debarment, or contract termination (as defined in proposed paragraphs (b) through (e) of this section), pursuant to specifically enumerated laws administered by VETS, will not be eligible to receive an award. The proposed list of specifically enumerated laws includes the following:

- Uniform Services Employment and Reemployment Rights Act (USERRA);
- Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA).

An adverse labor law decision is defined in proposed paragraph (b) of this section as a civil or criminal court judgment, a final administrative merits determination of an administrative adjudicative board or commission, or a decision of an administrative law judge or other administrative judge that is not appealed and that becomes the final agency action. The term “civil or criminal court judgment” is intended to include any final judgment of a trial court or appellate court level that has not been overturned at the time the award is to be issued. The proposed paragraph (b) goes on to establish a timeframe within which such decisions would render an employer ineligible for an award: a decision issued in the calendar year prior to the

year in which applications are solicited; or in the calendar year in which applications are solicited, up until the issuance of the award.

A stipulated agreement that would disqualify an employer from receiving an award is defined in proposed paragraph (c) of this section. This definition includes any agreement, including a settlement agreement, conciliation, agreement, consent decree, or other similar document, which contains an admission that the employer violated any of the laws outlined in paragraph (a). An agreement that states that it does not constitute evidence or admission of wrongdoing would not fall under this definition. As with paragraph (b), this proposed paragraph also sets forth that any such agreement that was entered into in the calendar year prior to the year in which applications are solicited, or in the calendar year in which applications are solicited up until the issuance of the award, would render the employer ineligible for an award. VETS seeks comments on whether certain violations of these laws should not result in disqualification.

Proposed paragraphs (d) and (e) define the terms “contract debarment” and “contract termination,” respectively. They cover debarments or terminations of federal contracts effected through an order or voluntary agreement pursuant to any of the laws listed in proposed paragraph (a). Accordingly, as proposed, these definitions would not cover employers whose federal contracts were debarred or terminated pursuant to laws other than those identified in paragraph (a). Proposed paragraph (e) clarifies that, for contract terminations, the same ineligibility timeframe as in paragraphs (b) and (c) applies – a termination that occurred in the calendar year prior to the year in which applications are solicited, or in the calendar year in which applications are solicited up until the issuance of the award. For debarments, proposed

paragraph (d) sets forth that an employer will be ineligible for the duration of time the debarment is in effect, regardless of when it was first entered.

Proposed paragraph (f) states that, even in the absence of the specific triggering events in proposed paragraphs (b) through (e), if VETS has credible information indicating that a significant violation of one of the laws in paragraph (a) may have occurred that could potentially result in one of the triggering events requiring disqualification, VETS retains the discretion to delay granting an award.

VETS specifically requests comments on several provisions of this section. First, VETS seeks comments on whether to expand the list to include additional laws administered by, or in conjunction with, the Department, such as the Fair Labor Standards Act; the Occupational Safety and Health Act of 1970 (OSHA); or the Mine Safety and Health Act. The proposed language is limited to laws that provide labor protections specific to veterans because the focus of this rule is on the hiring and retention of veterans.

Second, VETS is specifically interested in comments on the proposed basis for disqualifying an employer from receiving an award, including the scope of the definitions set forth in paragraphs (b) through (e), whether additional disqualifying events should be added, and whether the stated timeframes in which one of these triggering events will disqualify an employer should be adjusted. Third, VETS seeks comments on whether it should consider the nature of the violation (e.g., the magnitude of the violation; whether an applicant committed more than one violation during the relevant time period) as a factor in whether a violation is disqualifying. Fourth, VETS requests specific comment as to whether contract debarments under additional laws should disqualify an employer from receiving an award. VETS notes that changes to the labor violations included in this section will impact the cost of the program and,

therefore, the application fees. A dramatic increase in the number of violations triggering disqualification would likely result in a noticeable increase to the application fees. Finally, with regard to proposed paragraph (f), VETS seeks comments on whether it is advisable to delay awards in those circumstances where it has information suggesting a significant violation may have occurred, whether “credible information suggesting a significant violation” is an appropriate standard, and/or whether a different standard should be set.

Subpart C—Application Process

Section 1011.200: How will VETS administer the HIRE Vets Medallion Award process?

Proposed §1011.200 implements the requirements in sec. 2(b) of the Act regarding the award application process. Proposed §1011.200 retains the statutory language with minor adjustments for context.

Section 1011.205: What is the timing of the HIRE Vets Medallion Award process?

Proposed §1011.205 sets out the timing for the awards.

The introductory paragraph implements the language in sec. 3(a)(1) of the Act and cross-references the application cap section.

Paragraph (a) establishes a timeframe for when an employer’s actions may qualify it for an award. This language is necessary in order to clarify what time period the award covers and to make the award process administratively feasible. Additionally, this language is consistent with the requirement in sec. 3(a)(2) of the Act, which states that VETS shall require the submission of information from employers about efforts from the calendar year prior to that in which the award is to be awarded.

Paragraphs (b)-(e) reflect the statutory language at sec. 2(c) of the Act but paragraph (c) of §1011.205 provides additional clarity to employers about when applications are due.

Paragraph (f) implements the statutory language at sec. 2(c)(5) of the Act. Additionally, paragraph (f) clarifies that applicants who receive a denial will also receive notice of the denial along the same timeline as the award notices.

Section 1011.210: How often can an employer receive the HIRE Vets Medallion Award?

Proposed §1011.210 repeats the language in sec. 2(d) of the Act, which sets limitations on how frequently an employer is eligible to receive an award.

Section 1011.215: How will the employer complete the application for the HIRE Vets Medallion Award?

Proposed §1011.215 describes the application process and implements requirements in sec. 3(a) of the HIRE Vets Act.

Paragraph (a) implements sec. 3(a)(2) of the Act.

Paragraph (b) makes clear that VETS may request information in addition to information relevant to determining whether an employer qualifies for an award. VETS may collect other information that might support the awards program, such as success stories. This paragraph is authorized under sec. 3(a)(2) of the Act, which authorizes VETS to require applicants to provide information in addition to information governing eligibility for an award.

Paragraph (c) implements the attestation requirement of sec. 3(a)(2) of the Act and clarifies that the individual providing the attestation can be an equivalent official if an employer does not have a chief executive officer or chief human resources officer.

Paragraph (d) provides that the application form will be made available on the HIRE Vets website maintained by VETS.

Paragraph (e) describes how applicants can submit the application form. VETS requires all applicants to submit the completed application electronically unless the applicant requests a

reasonable accommodation under paragraph (f). Electronic submittal is more efficient and less costly to the applicant and to the agency for processing.

Paragraph (f) describes how VETS will provide a reasonable accommodation to applicants.

Paragraph (g) provides that if an employer's application is deemed incomplete, VETS will attempt to contact the employer for the missing information using the contact information provided on the application. Should the applicant not respond within the timeframe provided, the application will be deemed incomplete and will be denied.

Section 1011.220: How will VETS verify a HIRE Vets Medallion Award application?

Proposed §1011.220 implements the requirements at sec. 3(a)(3) of the Act, which require the Secretary to verify all information provided in the applications to the extent that such information is relevant in determining whether or not an employer should receive an award or in determining the appropriate level of award. The second sentence of proposed §1011.220 explains that this verification will be conducted by reviewing the information that the employer is required to submit with the application. The application will require that employers provide information to show that they have met the criteria for the awards and to attest to the veracity of that information. VETS has narrowly tailored its request for additional information to minimize the cost of applying for the award and because the requirement that the chief executive officer, the chief human resources officer, or an equivalent official attest under penalty of perjury that the information provided is accurate will provide a strong deterrent against false applications.

Section 1011.225: Under what circumstances will VETS conduct further review of an application?

Proposed § 1011.225 establishes that VETS may conduct further review of an application if VETS becomes aware of facts that indicate the application might have included incorrect information or that the applicant is ineligible under § 1011.120. The proposed section describes the circumstances under which VETS will conduct this further review. This is intended to ensure that awards are only given to employers who actually meet the award criteria. If VETS initiates such review prior to issuing the Award, VETS will not be required to meet the timeline requirements in this part.

Section 1011.230: Under what circumstances can VETS deny or revoke an Award?

Proposed § 1011.230 describes the circumstances under which VETS can deny or revoke an award. Paragraph (a) applies before the receipt of an award, and paragraph (b) applies after the receipt of an award. Under both paragraphs (a) and (b), VETS may either deny or revoke an award, as applicable, based on an employer's failure to provide documentation, VETS' determination that the employer's chief executive officer, the chief human resources officer, or an equivalent official falsely attested to information provided with an award application, or the determination that an employer is ineligible to receive an award pursuant to § 1011.120. VETS notes that it can deny or revoke an award for both intentional and unintentional false statements by an employer's chief executive officer, the chief human resources officer, or an equivalent official.

Paragraph (b)(4) states that VETS may also revoke an award for violations of the display restrictions at § 1011.405.

Paragraph (c) includes the reconsideration process that will be followed if VETS decides to deny or revoke an award.

Subpart D—Fees and Caps

Section 1011.300: What are the application fees for the HIRE Vets Medallion Award?

Proposed §1011.300 sets out the application fees for the HIRE Vets Medallion Awards.

Paragraph (a) summarizes the requirement in sec. 5(b) of the Act that the Secretary must establish an application fee that covers the cost of the program.

Paragraph (b) explains that VETS periodically will use the Implicit Price Deflator for Gross Domestic Product (GDP Price Deflator) published by the U.S. Department of Commerce to adjust the fee for inflation. The GDP Price Deflator measures inflation by taking the current prices of all domestic production of final goods and services in the U.S. economy (nominal GDP) and converting it into constant-dollars to measure the change in price levels. The GDP includes the output from the entire U.S. economy and will include any changes in consumption or investment. To capture the price increases that occur year to year in the cost of material and services, it will be necessary to escalate the fee using the GDP Deflator, which should capture the inflation occurring in the economy.

Paragraph (b)(1) clarifies the process VETS will use if it needs to make a significant adjustment to the fee for any reason other than inflation.

Paragraph (b)(2) provides that VETS will round the fee to the nearest dollar. VETS would do this for the administrative ease of both the agency and the applicants.

The fees identified in the paragraph (b) table were reached by analyzing the costs of the program and the amount of review each application will require. This analysis is discussed further in the “Application Fee” section of the Regulatory Procedures section of this preamble.

Paragraph (c) provides that fees will be submitted by applicants under the HIRE Vets Medallion Program using the U.S. Treasury pay.gov system or an equivalent system. Pay.gov provides a proven, secure electronic payment method that facilitates employers paying the

requisite fee to apply for the award. Pay.gov (<https://www.pay.gov>) will allow employers to make electronic payments to the Federal government using the internet. Instructions for making the application fee payment will be included in the instructions for the application form. This method of payment provides an efficient and effective method of receiving and tracking fee payments for the Act.

Paragraph (d) provides that the application fees are nonrefundable.

Section 1011.305: May VETS set a limit on how many applications will be accepted in a year?

Proposed §1011.305 provides that VETS may limit how many applications it will accept in a given year. The proposed rule includes this provision so that VETS can prevent the system for reviewing applications from being overwhelmed by the number of applications in the first few years of the program. Should VETS decide to set a limit for how many applications will be accepted in a year, it will provide notice in advance of the application acceptance period on this number of applications that will be accepted.

Subpart E—Design and Display

Section 1011.400: What does a successful applicant receive?

Proposed §1011.400 describes what recipients of the HIRE Vets Medallion Award will receive.

Paragraph (a) implements the statutory language at sec. 3(c) of the Act.

Paragraph (b) explains that VETS will create a digital image of the Medallion for recipients to use. This provision is proposed because recipients will likely want to display the award on digital platforms.

Section 1011.405: What are the restrictions on display and use of the HIRE Vets Medallion Award?

Proposed §1011.405 implements sec. 4 of the Act.

Subpart F—Requests for Reconsideration

Section 1011.500: What is the process to request reconsideration of a denial or revocation?

Proposed §1011.500 describes the reconsideration process applicants may use to request reconsideration over the denial of an award, the revocation of an award, or the denial of a particular award level. Because the reconsideration process applies to a voluntary award and because any reconsideration process must be paid for out of applicant fees, VETS has proposed a simple and limited reconsideration process to prevent a complicated reconsideration process from driving up the costs of the award application fees.

Paragraph (a) describes the circumstances under which an applicant may request reconsideration for a determination and the timeline for that request. Paragraph (a) also clarifies where a request for reconsideration must be submitted.

Paragraph (b) describes what an employer must include in its request for reconsideration.

Paragraph (c) states that VETS may request additional evidence or explanation from an employer requesting reconsideration.

Paragraph (d) provides the timeline for VETS to respond to a request for reconsideration with a determination about whether to grant or deny the request.

Paragraph (e) states that no additional Department review is available. Therefore, no additional administrative review is available anywhere in the Department.

Subpart G—Record Retention

Section 1011.600: What are the record retention requirements for the HIRE Vets Medallion Award?

This section is necessary to protect the integrity of the awards. VETS chose a record retention period of two years to provide sufficient time to examine any issues that arise from applications while not being unduly burdensome to applicants.

Regulatory Procedures

Executive Orders 12866 and 13563: Regulatory Planning and Review

Introduction

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits.

Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether a regulatory action is significant and therefore subject to the requirements of that Executive Order and to review by OMB. 58 FR 51735. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule that: (1) has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an

action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Id.

The Office of Management Budget did not find rule significant under Executive Order 12866 and, therefore, waived review. We analyzed costs and benefits of this rule using 2016 employment and wage data from the Bureau of Labor Statistics. The cost analysis uses a ten year time horizon. This benefits analysis is qualitative and appears at the end of this section. Since the benefits analysis is qualitative, there will be no analysis of net benefits (benefits minus costs). VETS's estimates of costs are presented as follows:

- Veteran employment and potential eligibility for the award—Estimates how many employers may meet the application requirements of the award.
- Unit costs—Estimates the unit costs of complying with the application requirements of the award.
- Participation rates—Estimates how many eligible employers will potentially choose to apply for the award.
- Government costs—Estimates the costs to the government for processing the applications and the costs to develop the system to support the review and approval process.
- Total annualized costs—Estimates the total annualized private and government costs of the program.

Costs for this regulation are uncertain due partly to the program being entirely new with no obvious equivalents; VETS cannot anticipate the number of employers that will choose to participate in the program. For this reason, this analysis contains estimates that are based on very limited data. This is the first veteran hiring award established by the Department to recognize employers for their accomplishments in recruiting, retaining, and hiring veterans. VETS welcomes comments on all of the estimates provided below.

Veteran Employment and Potential Eligibility for the Award

As of 2016 there were 20.9 million veterans¹, making up 10 percent of the civilian non-institutionalized population over the age of 18. While the total number of veterans varies over time, there are between 240,000 and 360,000 service members who leave military service each year according to a 2013 White House report². In 2016 there were 10 million veterans employed according to data collected from the Current Population Survey and reported by the Bureau of Labor Statistics (BLS) making up close to 7 percent of the U.S. employed population.

The three leading industry sectors for veteran employment are Manufacturing (NAICS code 31-33), with, 1.3 million veterans; Wholesale and retail trade (NAICS code 42, 44-45) with 1.1 million veterans; and Professional and business services (NAICS code 54-56) with 1.1 million veterans. Evaluating veteran employment as a percentage of total employment by industry highlights the various industries where veterans make up more than 7 percent of the employed population. Based on the data, it appears there are many industries where a typical employer can readily meet the basic criteria of hiring 7 percent or more veteran employees while it may be more difficult in other industries.

¹ Bureau of Labor Statistics, U.S. Department of Labor, Current Population Survey, 2016.

² Watson, Ben, (2014) Veteran Unemployment Rate Drops, But Still Outpaces the Rest of the Country. [www.defenceone.com](http://www.defenseone.com/news/2014/05/D1-Watson-veteran-unemployment-rate-drops-still-outpaces-rest-country/83692/), May 2, 2014. Retrieved from: <http://www.defenseone.com/news/2014/05/D1-Watson-veteran-unemployment-rate-drops-still-outpaces-rest-country/83692/>

Veteran employment levels at the 3 digit NAICS level (industry subsectors) were mapped to BLS data from the Current Employment Survey to derive veteran employment as a percentage of total employees by NAICS code. The results of this comparison are presented in Table 1. A majority of private industry subsectors have veteran employment with 7 percent or higher; the industries with the highest percentages were the Petroleum and coal products industry with 22.4 percent veteran employment, followed by Utilities with 20.5 percent veteran employment. The two industries with the lowest percentage of veteran employment are: Management of companies and enterprises with 0.5 percent and Internet publishing and broadcasting and web search portals with 1.0 percent veteran employment. Other industry sectors where the percentage of veterans employed is lower than the national average are Healthcare and Social assistance sector with 3.5 percent, and the Accommodations and food services sector with 1.6 percent veteran employment. The concentration of veteran employment in Utilities and Manufacturing industries is a reflection of the type of military experience many veterans offer when seeking jobs that match their skill set.

Table 1. Veteran Employment in 2016

Industry	Veteran Employment¹ (in thousands)	Total employment² (in thousands)	% of Veterans Employed
Total Employment	10,129	151,423	6.7%
Mining, quarrying, and oil and gas	92	626	14.7%
Construction	588	6711	8.8%
Manufacturing	1,285	12,348	10.4%
<u>Durable goods manufacturing</u>	898	7,719	11.6%
Nonmetallic mineral products	39	408	9.6%
Primary metals and fabricated metal products	156	1,763	8.8%
Machinery manufacturing	125	1,080	11.6%
Computers and electronic products	113	1,048	10.8%
Electrical equipment and appliances	30	383	7.8%
Transportation equipment	269	1,625	16.6%
Wood products	34	392	8.7%
Furniture and fixtures	28	389	7.2%
Miscellaneous manufacturing	103	591	17.4%
<u>Nondurable goods manufacturing</u>	387	4,629	8.4%
Food manufacturing	92	1,554	5.9%
Beverage and tobacco products	26	233	11.2%
Textiles, apparel, and leather	23	371	6.2%
Paper and printing	76	818	9.3%

Industry	Veteran Employment¹ (in thousands)	Total employment² (in thousands)	% of Veterans Employed
Petroleum and coal products	25	112	22.4%
Chemicals	106	811	13.1%
Plastics and rubber products	38	699	5.4%
Wholesale and retail trade	1,090	21,687	5.0%
<u>Wholesale trade</u>	260	5,867	4.4%
<u>Retail trade</u>	830	15,820	5.2%
Transportation and utilities	753	5,546	13.6%
<u>Transportation and warehousing</u>	638	4,989	12.8%
<u>Utilities</u>	114	556	20.5%
Information	180	2,772	6.5%
<u>Publishing, except Internet</u>	15	730	2.1%
<u>Motion pictures and sound recording industries</u>	13	420	3.1%
<u>Radio and TV broadcasting and cable subscriptions programming</u>	42	269	15.6%
<u>Internet publishing and broadcasting and web search portals</u>	2	201	1.0%
<u>Telecommunications</u>	96	795	12.1%
<u>Data processing, hosting, and related services</u>	10	300	3.3%
<u>Libraries, archives, and other information services</u>	2	59	3.4%
Financial activities	496	8,285	6.0%
<u>Finance and insurance</u>	309	6,142	5.0%
Finance	174	3,559	4.9%
Insurance	135	2,583	5.2%
<u>Real estate and rental and leasing</u>	187	2,143	8.7%
Real estate	146	1,559	9.4%
Rental and leasing services	41	583	7.0%
Professional and business services	1,092	20,136	5.4%
<u>Professional and technical services</u>	658	8,877	7.4%
<u>Management, administrative, and waste services</u>	433	11,259	3.8%
Management of companies and enterprises	11	2,241	0.5%
Administrative and support services	384	8,613	4.5%
Waste management and remediation services	38	405	9.4%
Education and health services	826	22,616	3.7%
<u>Educational services</u>	161	3,560	4.5%
<u>Health care and social assistance</u>	664	19,056	3.5%
Hospitals	266	5,025	5.3%
Health services, except hospitals	322	10,396	3.1%
Social assistance	76	3,636	2.1%
Leisure and hospitality	344	15,620	2.2%
<u>Arts, entertainment, and recreation</u>	128	2,235	5.7%
<u>Accommodation and food services</u>	216	13,386	1.6%
Accommodation	49	1,947	2.5%
Food services and drinking places	167	11,439	1.5%
Other services	351	5,685	6.2%
<u>Other services, except private households</u>	337	4,961	6.8%
Repair and maintenance	150	1,289	11.6%
Personal and laundry services	68	1,445	4.7%
Membership associations and organizations	119	2,950	4.0%
Government – Local³	708	14,339	4.9%

Source:

¹ Bureau of Labor Statistics, Current Population Survey, 2016

² Bureau of Labor Statistics, Current Employment Statistics, 2016

³ U.S. Census of Governments, 2012

(See Spreadsheets, Exhibit X for all sources and derivation)

The job posting site Indeed³ identified five occupational categories where veterans have the highest levels of employment. These are: Transportation and Material Moving, Installation Maintenance and Repair, Protective Service, Management, and Construction and Extraction. Many veterans find the skills and experience they developed while in the military align better with these occupations, making the transition to a civilian job easier.³

Due to the fact the proposed award program requires a fee, it was determined that employers with less than five employees, are relatively unlikely to participate in the program (although they are still eligible to apply for the award if they choose). Very small employers with less than 5 employees will most likely not hire often or may not choose to invest resources in actions that would qualify them for the award program, thus this analysis contains three groupings of employer size: small employers with 5 to 49 employees; medium employers with 50 to 499 employees; and large employers with over 500 employees. These groupings were based on the availability of data in the U.S. Census Bureau, 2014 Statistics of U.S. Businesses (SUSB)⁴, which closely approximates the definition of small, medium and large employers in the statute. The SUSB data showed a total of 2,361,000 employers with more than four employees. However, knowing the percentage of veterans in an industry's work force does not indicate how many employers in that industry can meet the quantitative criteria for receiving the award. For example, if 7 percent of an industry's workforce is veterans there will be many employers that are above and below this average in any given year's hiring. In order to estimate the number of potentially eligible employers (those meeting the quantitative criteria) in an

³ Culbertson, Daniel, (2016) A Deep Look at the Data: How Are Veterans Doing in Today's Workforce? Indeed blog, November 10, 2016. Retrieved from: <http://blog.indeed.com/2016/11/10/veterans-employment/>

⁴ U.S. Census Bureau, 2014. Statistics of U.S. Businesses Annual Datasets by Establishment Industry: U.S & States, NAICS, detailed employment sizes. Accessed on 6/15/2017 at <https://www.census.gov/data/datasets/2014/econ/susb/2014-susb.html>
Eligibility estimates by VETS. See text and spreadsheets (exhibit X).

industry, we need to be able to estimate the effects of turnover on the ability to meet retention criteria, the percentage of employers that hire 7 percent or more veterans, and the percentage with 7 percent employees in their current work forces. VETS welcomes comments on the estimates of veteran employment, and the percentage of employers in industries that meet or exceed the proposed hiring criteria of 7 percent veterans.

The effects of turnover on the ability to meet retention criteria may be the most difficult quantitative criteria to estimate. Average separation rates across all industries are such that if veterans are typical of all workers, a 75 percent retention rate would be difficult to meet⁵. However, published separation rates include seasonal and temporary employments, which are excluded under the definition of “employee” and subsequently from the calculation of retention rates in this proposed rule. Absent more detailed data, VETS assumes that half of the employers able to meet a 7 percent hiring rate will not be able to meet a requirement for 75 percent retention. VETS welcomes comments on the estimates of employment turn over, and the percentage of employers in industries able to meet the retention criteria.

For this analysis, if we make the simplifying assumptions that the percentage of veterans currently in the workforce are typical of available new hires in an industry, and that each new hire and each employee have an equal chance of being a veteran, then we can use the binomial distribution to estimate the probability that an employer has more than 7 percent veterans among new hires or more than 7 percent veterans among existing employees. The binomial distribution is designed to calculate the probability that 7 percent or more employees in a set of employees are veterans given the probability of an event (whether a given new hire or employee is a veteran). The application of the binomial distribution requires estimates of the number of

⁵ Bureau of Labor Statistics (BLS) Job Openings and Labor Turnover (2017). News Release ; For release 10:00 AM (EDT), July 11, 2017 <https://www.bls.gov/news.release/pdf/jolts.pdf>

new hires per year and the number of employees. For this purpose, VETS used U.S. Census Bureau, 2014 Statistics of U.S. Businesses (SUSB)⁶ data on the number of employers and employees for small employers, medium employers and large employers. These averages of new hires were 13 employees per employer for small employers, 123 employees per employer for medium employers and 3,000 employees per employer for large employers. VETS estimated that these employers would hire 25 percent of their workforce in any given year. The SUSB data shows a total of 2,311,602 employers with more than four employees. Of these, VETS estimates that 424,952, or 18 percent of all employers in the size range, would be potentially eligible for the program.

The complete formulas for the probability calculation are given in the spread sheets (Docket exhibit X). There are four probabilities needed for these calculations:

PH=probability more than 7 percent of new hires are veterans;

PE=the probability that more than 7 percent of employees are veterans;

PR=the probability that 75 percent of veteran hires are retained (estimated to be .5 in all cases); and

PLYH=the probability that an employer hired at least one veteran in the year prior to the current year.

Given these probabilities the formula used in the calculations for small and medium employers is:

Total probability=PH + (1-PH)*PE*PLYH*PR

For large employers, the formula is somewhat simpler:

⁶ U.S. Census Bureau, 2014. Statistics of U.S. Businesses Annual Datasets by Establishment Industry: U.S & States, NAICS, detailed employment sizes. Accessed on 6/15/2017 at <https://www.census.gov/data/datasets/2014/econ/susb/2014-susb.html> Eligibility estimates by VETS. See text and spreadsheets (exhibit X).

$$\text{Total Probability} = PH + (1-PH) \cdot \text{PLYH} \cdot PR$$

Table 2 shows the results for the estimate of potentially eligible employers by size class and industry.

Table 2. Estimate of Eligible Employers

Industry	Total Employers (5+)	Potentially Eligible Employers			Total
		Small Employers (5-49)	Medium Employers (50-499)	Large Employers (500+)	
Forestry, logging, fishing, hunting, and trapping	2,837	536	389	93	1,017
Mining, quarrying, and oil and gas extraction	9,350	3,377	1,322	0	4,700
Construction	204,561	51,059	8,464	915	60,438
Nonmetallic mineral products	6,136	1,430	699	244	2,374
Primary metals and fabricated metal products	35,064	7,638	3,613	1,025	12,276
Machinery manufacturing	14,706	3,928	2,432	682	7,043
Computers and electronic products	7,439	1,743	1,279	519	3,541
Electrical equipment and appliances	3,359	553	398	210	1,161
Transportation equipment	6,458	2,121	1,575	550	4,246
Wood products	7,325	1,588	705	165	2,457
Furniture and fixtures	7,641	1,417	456	84	1,958
Miscellaneous manufacturing	11,429	5,057	1,344	340	6,741
Food manufacturing	13,073	1,812	722	59	2,593
Beverage and tobacco products	2,653	773	247	90	1,110
Textiles, apparel, and leather	6,238	998	264	24	1,286
Paper and printing	14,483	3,426	1,404	350	5,179
Petroleum and coal products	710	253	197	113	563
Chemicals	6,476	1,746	1,341	589	3,676
Plastics and rubber products	7,397	788	517	18	1,323
Wholesale trade	133,958	15,239	2,664	2	17,905
Retail trade	258,174	37,563	4,402	42	42,007
Transportation and warehousing	61,190	20,258	6,418	2,245	28,921
Utilities	2,837	1,185	640	194	2,019
Publishing, except Internet	9,340	455	37	0	493
Motion pictures and sound recording industries	4,802	395	30	0	425
Radio and TV broadcasting and cable subscriptions programming	2,857	1,127	344	111	1,582
Telecommunications	3,705	1,097	498	160	1,755
Data processing, hosting, and related services	4,885	334	88	0	422
Libraries, archives, and other information services	3,237	269	37	0	307

Industry	Total Employers (5+)	Potentially Eligible Employers			Total
		Small Employers (5-49)	Medium Employers (50-499)	Large Employers (500+)	
Finance	33,143	3,767	1,228	8	5,003
Insurance	33,515	4,844	476	14	5,334
Real estate	47,711	12,428	2,509	778	15,714
Rental and leasing services	9,613	1,774	424	166	2,364
Professional and technical services	205,067	42,079	7,476	2,116	51,670
Management of companies and enterprises	23,944	66	6	0	72
Administrative and support services	108,014	12,007	2,405	3	14,415
Waste management and remediation services	8,782	2,240	570	168	2,977
Educational services	43,887	4,718	1,320	1	6,039
Hospitals	3,407	16	388	36	441
Health services, except hospitals	247,348	20,285	1,726	0	22,011
Social assistance	67,460	3,486	270	0	3,756
Arts, entertainment, and recreation	42,698	6,202	1,700	59	7,962
Accommodation	29,467	1,935	130	0	2,065
Food services and drinking places	273,382	10,708	262	0	10,970
Repair and maintenance	61,091	20,895	1,820	610	23,325
Personal and laundry services	58,697	7,987	395	0	8,382
Membership associations and organizations	121,174	13,647	1,017	0	14,664
Government- Local	40,882	0	8,273	0	8,273
Total	2,311,602	337,247	74,922	12,784	424,952

Source: U.S. Census Bureau, 2014. Statistics of U.S. Businesses Annual Datasets by Establishment Industry: U.S. & States, NAICS, detailed employment sizes. Accessed on 6/15/2017 at <https://www.census.gov/data/datasets/2014/econ/susb/2014-susb.html>

U.S. Census Bureau, 2012. Government Organization Summary Report: 2012. Accessed on 7/21/2017 at https://www2.census.gov/govs/cog/g12_org.pdf

Eligibility estimates by VETS.

See text and spreadsheets (Exhibit X).

Unit Cost

Using the information provided in the stakeholder meetings, and estimates from similar analysis done by other Department of Labor agencies, burden costs were estimated by employer size for each aspect of the application process including rule familiarization, collection, filling out the form, and follow-up/requests for reconsideration. VETS invites public comment on the steps employers would have to take to apply for the award program, how long each step would take and who would be involved in the process of applying for the award.

Rule familiarization costs are estimated to take one hour for all employers regardless of size; this is based on OSHA's recordkeeping rule updated in 2014⁷. This activity would typically be performed by a human resources manager at a large or medium size employer or by a person with equivalent responsibilities at a small employer. Using the data from the May 2016 BLS Occupational Employment survey (OES), the mean hourly wage of the human resources manager is \$57.79. For the purposes of this analysis, VETS estimates a fully loaded wage rate, including fringe benefits and overhead, resulting in a doubling of the OES wage rate.⁸ The total hourly wage being used to estimate the cost of familiarization is \$115.58. The regulation is structured by employer size which would not require employers to consider all aspects of eligibility but only those that pertain to their size. For these reasons one hour was estimated for rule familiarization of the award program requirements of eligibility and the application form instructions.

The eligibility requirements for the award program require that all employers compile information needed to fill out the application form and retain the information for two years. VETS estimated this would require 5 hours for large employers and 3 hours for medium and small employers. Each criterion for eligibility will have an entry in the application form. Information requested will include the following: employer address and other identifying information, veteran employment data, descriptions of the relevant veteran programs, and descriptions of the benefits offered to veterans. These estimates are an average for the gold and platinum award requirements. This activity will likely be performed by human resource specialists for a large or medium size employer. Using the data from the May 2016 BLS

⁷ Occupational Injury and Illness Recording and Reporting Requirements: North American Industry Classification System Update and Reporting Revisions (docket number: OSHA-2010-0019-0127)

⁸ The value of two is recommended by HHS in HHS, Guidelines for Regulatory Analysis, 2016, p. 33.

Occupational Employment survey (OES), the mean hourly wage of the human resources specialist is \$31.20. Adding overhead and fringe benefits, the fully loaded hourly wage rate used to estimate the collection of information is \$62.40. For a small employer, this activity is anticipated to be done by a payroll and timekeeping clerk, the mean hourly wage for this position as reported by BLS is \$20.95, and adding the fringe benefits and overhead results in an hourly wage of \$41.90.

Three hours of labor was estimated by VETS for a medium and small employer to compile information for the form, this was determined based on the number of award criteria, and due to human resources staff in medium and small employers being more familiar with the day to day management of an employer. At the stakeholder meetings held the week of June 5, 2017, smaller employers stated all the information needed to apply would come directly from the owner and would be easily obtained. VETS estimated five hours for large employers due to the additional information required to match the criteria for eligibility and the time for a human resource manager to determine if the programs offered by the employer meet the regulation criteria. Larger employers at the stakeholder meetings provided a range of one to four days, based on their past experience in applying for other award programs such as the Employer Support of the Guard and Reserve (ESGR) Freedom Award⁹. The application form for VETS's award program requires employers to provide employment and descriptive information for as many as seven fields to as few as two fields depending on the size of the employer and the award level. This is less time consuming than the information requested for the ESGR Freedom Award. For these reasons, an average of five hours was estimated for large employers, and an

⁹ Employer Support of The Guard and Reserve Freedom Award is given to employers who are nominated to recognize those that support their employees who serve in the Guard and Reserve. There are up to 15 awards presented each year by firm size and to the public sector. <http://www.freedomaward.mil/>.

average of three hours was estimated for medium and small employers to collect and retain needed information.

Large and medium size employers are expected to incur the cost for running a query to identify the number of veterans hired and veterans retained for the years requested on the application form. The majority of large and medium employers will have a database system for managing their workforce; this system typically includes the hire date and various demographic information about their employees. Running a query specifically for this application form is estimated to take two hours by a database administrator at a large or medium size employer according to comments received from the stakeholder meeting in early June of 2017. Using the data from the May 2016 BLS Occupational Employment survey (OES), the mean wage of the database administrator is \$41.89. Adding overhead and fringe benefits¹⁰, the total wage used to estimate the cost of this task is \$83.78. Small employers with less than 50 employees typically do not manage their workforce using a database, and due to the closer interactions among employees at small employers, the payroll clerk would know most of the employees individually. Thus, a small employer would not have a need to run a query.

Once the information has been gathered by an employer, applicants will need to enter the information in the form and enter the payment information needed on www.pay.gov; this was estimated to take 2 hours for a large employer, 1.5 hours for a medium employer, and 1 hour for a small employer. These burden estimates are an average for the gold and platinum award requirements. Large employers are expected to take 2 hours due to the additional criteria required to be eligible for the award, this activity would be done by a human resource specialist.

¹⁰ Bureau of Labor Statistics (BLS) Occupational Employment Statistics (OES) (2017). Fringe markup is from the following BLS release: Employee Costs for Employee Compensation news release text; For release 10:00 AM (EDT), June 9, 2017 <https://www.bls.gov/news.release/pdf/ecec.pdf>

A medium employer is expected to take 1.5 hours because there are fewer criteria than a large employer, this activity would be done by a human resource specialist. Using the data from the May 2016 BLS Occupational Employment survey (OES), the mean wage of a human resource specialist is \$31.20. Adding overhead and fringe benefits, the total wage used to estimate the cost of this task is \$62.40. A small employer is estimated to take 1 hour because there are fewer criteria than a medium size employer. For a small employer, a payroll and timekeeping clerk would most likely perform this task, with a mean hourly wage of \$20.95 as reported in the BLS 2016 OES, with added fringe benefits and overhead, results in an hourly wage of \$41.90.

The form requires the attestation of an executive (CEO, CFO, or equivalent) that the information on the form is accurate and true. It is expected that this would take 15 minutes for all employers applying for the award and would most likely require the executive to take the time to review the form. For a large and medium size employer, this activity will be performed by an executive with a mean hourly wage of \$93.44 as reported in the BLS 2016 OES, then adding fringe benefits and overhead the hourly wage for this task would be \$186.88. At a small employer where the executive positions may not exist, this task may be done by someone with equivalent responsibilities and duties, such as the owner. For the purposes of estimating the cost of attestation for small employers we are using the wage rate of a human resource manager with a mean hourly wage of \$57.79 as reported in the BLS 2016 OES, adding fringe benefits and overhead results in a fully loaded wage for this task of \$115.58. For a smaller employer, the position of a general and operations manager would be similar to the owner of the firm, the mean hourly wage is \$58.70 as reported in the BLS 2016 OES, adding fringe benefits and overhead results in a fully loaded wage for this task of \$117.40.

Following up on incomplete applications is estimated to take 30 minutes for 5 percent of employers applying, and a request for reconsideration would take 30 minutes for 1 percent of employers applying. At a large and medium size employer, following up on an application would be done by the human resource specialist with an hourly wage of \$62.40 (including fringe benefits and overhead), and a reconsideration would be done by a human resource manager with an hourly wage of \$115.58 (including fringe benefits and overhead). At a small employer, the payroll clerk may likely follow up on an application, with an hourly wage of \$41.90 (including fringe benefits and overhead), and the human resource manager equivalent would be involved in a reconsideration of a denied application, with an hourly wage of \$115.58 (including fringe benefits and overhead). The majority of large and medium employers have a human resource staff which manage different aspects of the workforce, or outsource the managing of the database for tracking the employer's workforce over time. As a result, large and medium employers are expected to have the same occupations involved in the process of applying for the award, while a different set of occupations were identified for small employers which typically do not have dedicated human resource staff or a database administrator.

Table 3. Burden Costs by Employer Size

Tasks by Employer Size	Resource	Wage	Hours	Cost
Large Employers				
Rule familiarization	HR manager	\$116	1.0	\$116
Data collection large employers	HR specialists	\$62	5.0	\$312
Query report large employers	DB Administrators	\$84	2.0	\$168
Filling form, large employers	HR specialists	\$62	2.0	\$125
Executive signature	Executive	\$187	0.25	\$47
Follow up (assume 5 percent)	HR specialists	\$62	0.5	\$31
Reconsideration if denied award (1 percent)	HR manager	\$116	0.5	\$58
Average unit cost per employer				\$857
Medium Employer Activities				
Rule familiarization	HR manager	\$116	1.0	\$116

Tasks by Employer Size	Resource	Wage	Hours	Cost
Data collection medium employers	HR specialists	\$62	3.0	\$186
Query report medium employers	DB Administrators	\$84	2.0	\$168
Filling form medium employers	HR specialists	\$62	1.5	\$93
Executive signature	Executive	\$187	0.25	\$47
Follow up (assume 5 percent)	HR specialists	\$62	0.5	\$31
Reconsideration if denied award (1 percent)	HR manager	\$116	0.5	\$58
Average unit cost per employer				\$699
Small Employer Activities	Resource	Wage	Hours	Cost
Rule familiarization	HR manager	\$116	1.0	\$116
Data collection small employers	Payroll and timekeeping clerks	\$42	3.0	\$126
Filling form, small employers	Payroll and timekeeping clerks	\$42	1.0	\$42
Executive signature	HR manager	\$116	0.25	\$29
Follow up (assume 5 percent)	Payroll and timekeeping clerks	\$42	0.5	\$21
Reconsideration if denied award (1 percent)	HR manager	\$116	0.5	\$58
Average unit cost per employer				\$392

Source: Bureau of Labor Statistics, Occupational Employment Statistics 2016.
(See Spreadsheets, Exhibit X for all sources and derivation)

The burden estimates were mainly driven by the duration of time expected for each aspect of the application process, and the type of occupation identified as performing the various activities for the employer size.

Government Costs

The cost to the government involves the intake, review, verification, processing of the applications, and notification/distribution of the award. To efficiently process applications, VETS will develop and maintain a system to electronically receive, review applications to determine eligibility and issue the awards. The cost for such a system would include IT hardware and software, IT maintenance, helpdesk costs, and VETS program management personnel costs. VETS has estimated lifecycle costs. The estimated cost of creating an

application system and form is approximately \$933,100 which annualized over 10 years at a 3 percent discount rate results in a cost of \$109,388 per year.

The business process for the intake, review, and processing of applications was estimated using average wage data from BLS Occupation codes for each phase including solicitation, application processing, application review, award notification, and reporting to Congress. The cost to the government for processing is estimated to be \$2.6 million dollars per year based on 10,728 applications being processed per year.

As part of the business process there will be costs associated with program outreach, messaging, and notification of award winners. This is estimated to cost \$245,086 annually. An outreach specialist is estimated to spend 1,140 hours involved in these tasks. The outreach specialists with an hourly wage rate of \$45.42 as reported by OPM for a GS 13 in 2017¹¹; plus fringe benefits and overhead the hourly wage for this task would be \$90.84. These tasks will also involve a program manager spending 1,000 hours with an hourly wage rate of \$53.67 GS 14, plus fringe benefits and overhead the hourly wage would be \$107.36. An IT specialist GS 12 would also be involved in supporting tasks with messaging and recognition of award winners, spending 100 hours with an hourly wage of \$38.20, plus fringe benefits and overhead the hourly wage would be \$76.40.

The application process will require support from contractors to set up the process, the receipt of the forms and the processing of the applications; this is estimated to cost \$1,896,940 annually. A program specialist will spend 200 hours annually with a mean hourly wage rate of \$59.31 as reported in the BLS 2016 OES¹², plus fringe benefits and overhead, would be \$118.62. An IT specialist will spend 40 hours to support these activities with an hourly wage

¹¹ OPM https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/DCB_h.pdf

¹² BLS OES occupation code 11-2031 Public Relations and Fundraising Managers.

rate of \$42.25¹³, plus fringe benefits and overhead the hourly wage is \$84.50. The program manager¹⁴ is estimated to spend 151 hours processing applications, with an hourly wage rate of \$58.7, plus fringe benefits and overhead the hourly wage is \$117.40. A Program specialist¹⁵ will perform the bulk of the application review tasks, this will total 18,569 hours with an hourly wage rate of \$35.99 plus fringe benefits and overhead the hourly wage will be \$71.98. As part of the review process of the applications, VETS will need to verify applicants do not have adverse labor law decisions, stipulated agreements, contract debarments, or contract terminations, against them under the Uniform Services Employment and Reemployment Rights Act (USERRA); or the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA).

This verification process will involve VETS and the Office of Federal Contract Compliance Programs (OFCCP) checking their databases for award applicants. VETS estimates it will take each agency, OFCCP and VETS, an average of 15 minutes per application for this review. A GS -13 would perform the check with a loaded hourly wage of \$90.84 and spend 13 minutes per employer on the list, and a GS-15 with a loaded hourly wage of \$126.28 would spend 2 minutes per employer on the list verifying the findings in the initial check. The IT process developed to support this review will be maintained by a contractor¹⁶ spending 240 hours with a loaded hourly wage of \$84.50, (hourly mean wage from BLS without fringe benefits or overhead is \$42.25).

¹³ BLS OES occupation code 15-0000 Computer and Mathematical Occupations

¹⁴ BLS OES occupation code 11-1021 General and Operations Managers

¹⁵ BLS OES occupation code 13-1199 Business Operations Specialists

¹⁶ BLS OES occupation code 15-0000 Computer and Mathematical Occupations

The notification of the award will also be executed by a contractor, and will involve 50 hours of a program manager's¹⁷ time with a loaded hourly wage of \$117.40, and 40 hours of a program specialist¹⁶ time with a loaded hourly wage of \$71.98.

The oversight of the contract for the application processing will be done by VETS personnel. This will take 312 hours of a program manager's time (GS-14) with a loaded hourly wage of \$107.36, and 120 hours of a program specialist's time (GS-13) with a loaded hourly wage of \$90.84.

The statute requires a report to congress; this will be done by VETS personnel, and will cost a total of \$10,406 dollars annually. This task will take a program manager (GS-14) 80 hours with a loaded hourly wage of \$107.36 and another 20 hours of time for a program specialist's time (GS-13) with a loaded hourly wage of \$90.84.

VETS invites public comment on the cost of developing a system to accept and review applications.

Application Fee

The HIRE Vets Act provides that the Secretary may assess a reasonable fee on employers that apply for receipt of a HIRE Vets Medallion Award and that the amount of the fee must be sufficient to cover the costs associated with carrying out the HIRE Vets Act. The proposed fee will cover the costs of solicitation, processing applications, vetting for violations, and award notifications, as well as the maintenance cost of the IT system used in the processing of applications.

In processing the applications, VETS will need to verify the information on the form being submitted by employers. Given that the number of criteria varies by employer size, and

¹⁷ BLS OES occupation code 11-1021 General and Operations Managers

will consequently require additional review by VETS, the fee will vary by employer size to reflect the cost of reviewing additional criteria. For example, the large employer platinum award requires the applicant to provide five types of integration assistance. However, the small employer platinum award only requires that the applicant provide two types of integration assistance. Consequently, the large employer award will take longer to review than the small employer award.

In recognition of these differences in the number of criteria and information needing to be reviewed and verified as part of processing awards, the fees will be graduated to reflect the differences in the amount of review VETS would need to perform for large, medium, and small employers. The proposed fee for large employers is \$495 per applicant, the proposed fee for medium employers is \$190 per applicant, and the proposed fee for small employers is \$90 per applicant, which covers the anticipated cost to VETS for processing 4,152 applications in the first year. The fees were estimated by taking the average cost to VETS of \$300 per application, and multiplying it using factors of time which reflect the added information needed to review. Large employers would take VETS 1.6 times longer than the estimated average cost to process the application, for medium employers it would be 0.6 times the average cost, and for small employers it would be 0.3 times the average costs. VETS invites public comment on what is an appropriate fee amount for employer sizes, which will enable VETS to recover costs as required.

Table 4. Government Costs

Application Processing	Employers		
	4,152	6,228	10,728
Solicitation	\$245,086	\$245,086	\$245,086
Receipt and Processing	\$565,828	\$823,693	\$1,382,564
Violation Vetting by VETS and OFCCP	\$200,119	\$299,335	\$514,376
Award Notification	\$160,333	\$236,118	\$400,366

Contract Oversight	\$44,397	\$44,397	\$44,397
IT Support and maintenance	\$20,280	\$20,280	\$20,280
Report to Congress	\$10,406	\$10,406	\$10,406
Total Processing Cost	\$1,246,449	\$1,679,315	\$2,617,473
Average government cost per application	\$300	\$270	\$244
Sunk Development Costs			
Development of Application System			\$ 98,625
Application Form Development			\$ 834,474
Total Development Costs			\$933,099

Source: OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis

(See Spreadsheets, Exhibit X for all sources and derivation)

Average cost per application = total processing cost / # of employer

Participation and Costs per Year

CBO originally developed an estimate that 4,000 employers would participate in the program in the first year. This estimate was based on the assumption that only 2 percent of employers would be potentially eligible and 25 percent of medium and large employers potentially eligible would apply for the program. In CBO's estimate, small employers were excluded from being able to apply based on an earlier version of the HIRE Vets bill. If CBO had included small employers in their estimate using the same methodology the number of employers applying would increase to close to 50,000 employers.

As noted above, VETS, making use of BLS veteran' labor force participation rate data, estimates that far more than 2 percent of employers that are eligible may choose to participate. Due to the lack of data for more accurate participation rates, VETS assumes that approximately 4,119 employers will apply in the first year, but that this would increase to 6,228 employers in the second year and 10,728 per year in succeeding years. Table 5 shows the estimated participation rates by size class for each year, and resulting estimated costs of applications.

Table 5. Estimated Participation Rates and Numbers of Applicants by Year

Size Class	1 st Year Participation Rate	1st Year Number of Applicants	2 nd Year Participation Rate	2 nd Year Number of Applicants	3 rd Year Participation Rate	3 rd Year Number of Applicants
Small	0.1%	304	0.2%	674	0.6%	2,023
Medium	3.0%	2,248	4.0%	2,997	6.5%	4,870

Large	12.5%	1,601	20.0%	2,557	30%	3,835
Total	Not Applicable	4,152	Not Applicable	6,228	Not Applicable	10,728

VETS Estimates (See Spreadsheets, Exhibit X for all sources and derivation)

Table 6 shows the result of multiplying the employer unit costs of applying for the award, developed in the previous Unit Cost section, by the number of anticipated participants to obtain the costs by size class and total application cost for each year. These costs reflect the time and resources incurred by the employer when applying for the award program; this includes all the tasks discussed in the previous Unit Cost section.

Table 6. Employer Application Costs by Year

Size Class	1 st Year Costs	2 nd year Costs	3 rd year Costs
Small	\$95,215	\$211,589	\$634,767
Medium	\$1,377,355	\$1,836,473	\$2,984,269
Large	\$1,230,468	\$1,965,603	\$2,948,405
Total	\$2,703,038	\$4,013,666	\$6,567,441

VETS Estimates, (See Spread Sheets, Exhibit X for all sources and derivation)

There are multiple factors which would contribute to the participation rate of large, medium, and small employers, such as the fee for applying, amount of outreach by VETS, and the potential benefits received by the employers receiving the award. The problem here is a classically difficult one in economics—that of estimating demand for new products. In this case, we have little data and few comparable products on which to base an estimate. VETS is aware that the total costs are dependent on the number of employers that apply and the number could be much lower or higher than VETS baseline estimates.

At the stakeholder meetings, some representatives from larger employers stated their willingness to pay up to several thousand dollars, while representatives for smaller employers didn't specify a fee amount they would be willing to pay. It would seem reasonable to assume a fee of more than several hundred dollars would discourage many small employers from applying. The total cost, burden plus fees, is estimated to range from \$404 for small employers

to \$1,264 for large employers. Depending on the success of outreach and other messaging, these efforts could attract more applicants than CBO’s estimate. Over the long term, employers will want to apply if there are quantifiable benefits in the form of increased revenue if this award attracts more customers, and by increasing the pool of veteran applicants when they are hiring. These factors have the potential of increasing the number of participating employers to close to 50,000. Higher participation would result in increased costs relative to the overall cost burden and overall government cost. However, considering all costs, the program will most likely not have costs in excess of \$100 million per year. Such costs would only occur if 100 percent of potentially eligible medium and large employers apply and 25 percent of potentially eligible small employers apply every year.

VETS invites public comment on the level or participation by industry and employer size.

Total Annualized Costs

VETS estimated annualized costs to employers for participation in this award program over a 10 year period using 3percent and 7percent discount rates based on the costs of application and costs to the government developed above. These total costs are provided in Table 7.

Table 7. Total Annualized Costs of the Proposed Rule

Cost Element	Annualized Costs at 3%	Annualized Costs at 7%	First Year Costs (if different from annualized costs)
Costs for Preparing Applications	\$5,845,415	\$ 5,735,649	\$2,703,038
Costs to Government of Processing Application (To be reimbursed through fees)	\$2,357,854	\$2,318,462	1,246,449
Total Private Sector Costs, including Fees for Government Processing	\$8,203,269	\$ 8,054,111	\$3,949,487
Costs to Government for Developing System	\$109,388	\$132,852	\$933,099

Cost Element	Annualized Costs at 3%	Annualized Costs at 7%	First Year Costs (if different from annualized costs)
(Not reimbursed by fees)			
Total	\$8,312,657	\$8,186,963	\$ 4,882,586

VETS Estimates (See Spreadsheets, Exhibit x for details)

Alternatives

VETS considered alternative quantitative criteria for small and medium size employers. One alternative would be to change the proposed criteria for small and medium employers that require applicants to have both a retention rate of 75 percent (for gold)/85 percent (for platinum) and a veteran employee percentage of 7 percent (for gold)/10 percent (for platinum). Instead, this first proposed alternative criterion would drop the veteran employee percentage requirement. Keeping all the participation rates the same, VETS estimates that this change would increase the number of potentially eligible employers by 38 percent, participation in the program by 19 percent, and would increase annualized costs from approximately \$8 million per year to \$11.9 million a year. This alternative has the disadvantage that it would allow employers who have not recently achieved a 7 percent hiring goal to win the award.

VETS also considered an option in which small and medium employers could qualify if they met either of the following: 1) 7 percent of the employer's new hires during the previous year were veterans, or 2) if a total of 7 percent of the employees it hired over the last two years were veterans and the employer retained 75 percent of those veterans hired in the first year of that timeframe (previous year of the previous year). This alternative broadens the hiring eligibility timeframe. This option also slightly increases program eligibility but it does so by significantly increasing small employer eligibility while lowering eligibility for medium employers. VETS felt that this was not a useful effect given medium employers are more likely to participate in the program.

VETS also examined an option in which the only hiring/retention criteria for small and medium size employers would be that 7 percent of new hires over the last two years are veterans along with a 75 percent retention criteria from the first of the two years (previous year of the previous year). Under this option, employers would no longer be able to satisfy the hiring/retention criterion solely by having 7 percent of its new hires in the previous year be veterans. This approach also increased small employer eligibility at the expense of decreasing medium employers' eligibility. Again, because of expected high participation rates by medium employers, VETS decided not to adopt this alternative.

None of these estimates take into account the cost savings to both the private sector and the government of this alternative. VETS is interested in comments on these and other alternative criteria for medium and small employers.

Benefits

The main purpose of the medallion is to recognize and award employers who have not only recruited and retained veterans for positions in their workforce but also established employee development programs for veterans and offered benefits to improve retention.

The unemployment rate of veterans trends lower than the civilian unemployment rate, but regionally the unemployment rate for veterans can vary from a low of 1.8 percent in Indiana to a high of 7.6 percent in the District of Columbia, as reported in the March 2016 release of the Employment Situation of Veterans by BLS. The higher unemployment rate for veterans can be attributed to the labor market in the District of Columbia which is mostly composed of professional and services industry occupations where historically there are lower employment rates for veteran workers. These veterans are experienced, mission focused, responsible, independent, and capable workers who often face difficulties finding jobs that match their skills.

In a 2016 Forbes article¹⁸ highlighting veterans issues as they adjusted to the civilian workforce, the top challenges reported for veterans are a lack of training or education for the work, lack of advancement opportunities, and employers undervaluing their military experience.

Employers will want to apply for the award if there are quantifiable benefits in the form of increased revenue generated by attracting more or repeat customers, or a better pool of veteran applicants for jobs.

Many employers who seek out veterans to hire have stated there are many benefits in attracting veterans, such as the experience they bring, more focused attention, and the ability to work independently.¹⁹ Employers who attain the proposed award will be able to market themselves as a veteran friendly employer and be able to attract more veterans for job openings.

VETS invites public comment regarding the type of benefits an employer who receives this award would gain.

Regulatory Flexibility Certification

For regulatory flexibility purposes for this rule, economic impacts are considered significant in any given sector if costs are greater than 1 percent of revenues or 5 percent of profits. For the purpose of determining impacts on small employers, VETS considered costs as a percentage of revenues and profits by industry sector for employers with 5 to 500 employees. Table 8 shows the minimum and maximum impacts for each three digit sector within the two-digit sector shown. (Full impacts and derivation are given in the spreadsheets, Exhibit X).

Table 8 shows that no industry sector has costs in excess of 1 percent of revenues or 5 percent

¹⁸ Strauss, Karsten, (2016) How Veterans Adjust To The Civilian Workforce, November 11th, 2016. Retrieved from: <https://www.forbes.com/sites/karstenstrauss/2016/11/11/how-veterans-adjust-to-the-civilian-workforce/2/#2d316ff8395d>

¹⁹ Military & Defense team, (2016) 10 Reasons Companies Should Hire Military Veterans, November 11, 2016. Retrieved from: <http://www.businessinsider.com/reasons-companies-should-hire-military-veterans-2016-11>

of profits. Further it should be noted that small employers are only subject to this rule if they choose to apply for the award. Thus no small business needs to incur the costs unless they believe that the benefits exceed the costs for them.

Table 8. Economic Impacts

NAICS	Title	<u>Average Revenue</u> Per Establishment	<u>Average Cost to</u> <u>Revenues</u>		<u>Average Cost to</u> <u>Profits</u>	
			Minimum	Maximum	Minimum	Maximum
11	Agriculture, Forestry, Fishing, and Hunting	4,244,996	0.009%	0.026%	0.176%	0.844%
21	Mining	13,371,157	0.002%	0.009%	0.068%	0.068%
22	Utilities	21,521,736	0.003%	0.003%	-0.220% *	-0.220% *
31-33	Manufacturing	10,225,679	0.002%	0.021%	0.030%	0.485%
42	Wholesale Trade	20,024,426	0.002%	0.006%	0.014%	0.203%
44-45	Retail Trade	3,928,643	0.005%	0.042%	0.243%	0.243%
48-49	Transportation	5,700,083	0.004%	0.039%	0.051%	4.545%
51	Information	4,990,489	0.009%	0.020%	-0.165% *	0.192%
52	Finance and Insurance	5,367,956	0.007%	0.019%	0.015%	0.314%
53	Real Estate	4,371,291	0.007%	0.025%	0.038%	0.566%
54	Professional, Scientific, and Technical Services	2,986,458	0.020%	0.020%	0.517%	0.517%
55	Management	2,306,072	0.026%	0.026%	0.131%	0.131%
56	Administrative and Support, Waste Management and Remediation Services	2,727,336	0.018%	0.030%	0.426%	0.765%
61	Educational Services	2,514,535	0.024%	0.024%	0.522%	0.522%
62	Health Care	8,435,099	0.003%	0.051%	0.052%	0.964%
71	Arts, Entertainment, and Recreation	2,963,512	0.014%	0.039%	0.236%	2.414%
72	Accommodation and Food Services	1,381,321	0.033%	0.065%	0.505%	1.224%
81	Other Services	1,319,709	0.030%	0.094%	1.222%	2.905%

Source: VETS based on data from IRS (U.S. Internal Revenue Service), 2013. Corporation SourceBook, 2013. <http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Source-Book:-U.S.-Total-and-Sectors-Listing>, Accessed by ERG, 2016. U.S. Census Bureau, 2012. Statistics of U.S. Businesses Employment and Payroll Summary: 2012-Data by enterprise employment size, Accessed on 7/11/2017 at <https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html> See Spreadsheets, Exhibit X, for full derivation.

*Negative profit rates reported for these industries.

As a result of these considerations, per §605 of the Regulatory Flexibility Act, VETS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. VETS requests comments on this certification.

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Eligibility estimates by VETS. See text and spreadsheets (exhibit X).

Paperwork Reduction Act

Overview

The proposed regulations contain collections of information (paperwork) requirements that are subject to review by the Office of Management and Budget (OMB). The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., and its implementing regulations, 5 CFR part 1320, require that VETS consider the impact of paperwork and other information collection burdens imposed on the public. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person may generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Solicitation of Comments

VETS prepared and submitted an Information Collection Request (ICR) for the collections of information contained in the proposed regulations and the HIRE Vets Medallion Award application to OMB for review in accordance with 44 U.S.C. 3507(d). This NPRM allows a 30-day public comment period for the public to comment on the collections of information contained in the proposed rule. However, the PRA requires that Agencies provide a 60-day notice in the *Federal Register* requesting public comment on the collections of

information in accordance with 44 U.S.C. 3506(c). VETS is publishing a companion notice elsewhere in this issue of the *Federal Register* allowing the public 60-days to comment on the collections of information contained in the proposal.

VETS solicits comments on these collections of information and the HIRE Vets Medallion Award application and their associated estimated burden hours and costs. VETS also requests comments on the following items:

- Whether the proposed collection of information requirements and application are necessary for the proper performance of VETS' functions, including whether the information is useful;
- The accuracy of VETS' estimate of the burden (time and cost) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility and clarity of the information collected; and
- Ways to minimize the compliance burden on employers, such as by using automated or other technological techniques for collecting and transmitting information.

Members of the public who wish to comment on the paperwork requirements in this proposal must send their written comments to: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, VETS (RIN 1293-AA21), Office of Management and Budget, Room 10235, Washington, DC 20503, fax: (202) 395-6881 (this is not a toll-free number), or email: *OIRA_submission@omb.eop.gov*. VETS encourages commenters also to submit their comments on these paperwork requirements to VETS, see section **Addresses** for instructions on submitting comments to VETS.

Proposed Collection of Information Requirements

The regulations implementing the Act require VETS to annually solicit and accept voluntary information from employers for consideration of employers to receive a HIRE Vets Medallion Award. The Act establishes specific criteria at two levels, gold and platinum, for large employers (those with 500 employees or more) and allows VETS discretion in establishing criteria for small and medium employers to qualify for similar awards.

The NPRM proposes the application process and criteria that VETS intends to use to receive, review, and process applications, verify the information provided and award the HIRE Vets Medallion Award to those employers meeting the criteria and deserving of the award. VETS developed the HIRE Vets Medallion Award application Forms [VETS-1011LP, VETS-1011LG, VETS-1011MP, VETS-1011MG, VETS-1011SP, VETS-1011SG] for employers to complete and submit to VETS to fulfill the regulatory requirements to receive an award. The Act establishes a fund, designated as the “HIRE Vets Medallion Award Fund” and requires the Department to assess a reasonable fee from the applicants to cover the costs associated with carrying out the HIRE Vets Medallion program. The NPRM provides the fee amount and how to submit the fee.

The proposed rule provides specific award criteria for the large employers to qualify for the gold and platinum awards. Although the number of criteria an employer is required to satisfy in the proposed rule differs by award, the large employer criteria established by statute are generally incorporated across the large employer, medium employer, and small employer awards. The applications would require employers to provide information to meet award criteria dependent upon the size of the employer and the reward the employer is requesting, gold or platinum. The following table provides the corresponding regulatory citation:

Proposed Regulatory Provision

<i>Employer size</i>	<i>Gold Award</i>	<i>Platinum Award</i>
Large	§ 1011.100(a)	§ 1011.100(b)
Medium	§ 1011.105(a)	§ 1011.105(b)
Small	§ 1011.110(a)	§ 1011.110(b)

The proposal also states that VETS may require additional information in support of the application for the HIRE Vets Medallion Award (§1011.215(b)). Also, employers are required to maintain information relied upon to complete the application for two years after the application is submitted to VETS (Subpart G, §1011.600).

Title of Collection: Honoring Investments in Recruiting and Employing American Military Veterans Act.

OMB Control Number: 1293-0NEW

Total Estimated Number of Annualized Respondents: 7,036

Total Estimated Number of Annualized Responses: 34,245

Frequency: On Occasion

Total Estimated Annual Time Annual Burden hours: 58,716

Total Estimated Annual Other Costs Burden: \$1,847,746

The application solicits the information VETS will review and evaluate to determine if an employer will receive an award, and if so, whether the award will be a gold or platinum award. Employers are required to maintain material used to complete that application for additional verification if needed or in case VETS becomes aware of facts that may indicate information submitted on the application may be incorrect.

Small Business Regulatory Enforcement Fairness Act of 1996

VETS has determined that this proposed rulemaking does not impose a significant economic impact on a substantial number of small entities under the RFA; therefore, VETS is not required to produce any Compliance Guides for Small Entities, as mandated by the SBREFA.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this NPRM does not include any Federal mandate that may result in excess of \$100 million in expenditures by state, local, and Tribal governments in the aggregate or by the private sector.

Executive Order 13132 (Federalism)

VETS has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have “federalism implications.” This proposed rule will not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments)

This NPRM does not have Tribal implications under Executive Order 13175 that would require a Tribal summary impact statement. The NPRM would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes or on the distribution of power and responsibilities between the Federal government and Indian Tribes.

Plain Language

VETS drafted this NPRM in plain language.

Effects on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires the assessment of the impact of this proposed rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale. VETS has assessed this proposed rule in light of this requirement and determined that this NPRM would not have a negative effect on families

Executive Order 13045 (Protection of Children)

This NPRM would have no environmental health risk or safety risk that may disproportionately affect children.

Environmental Impact Assessment

A review of this NPRM in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq.; the regulations of the Council on Environmental Quality, 40 CFR 1500 et seq.; and DOL NEPA procedures, 29 CFR part 11, indicates the NPRM would not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

Executive Order 13211 (Energy Supply)

This NPRM is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12630 (Constitutionally Protected Property Rights)

This NPRM is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

Executive Order 12988 (Civil Justice Reform Analysis)

This NPRM was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The NPRM was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects in 20 CFR Part 1011

Employment, Veterans, Employer Recognition, Medallion

For the reasons discussed in the preamble, VETS proposes to add 20 CFR part 1011 to read as follows:

Part 1011-- HIRE Vets Medallion Program

Subpart A—General Provisions

§1011.000 What is the HIRE Vets Medallion Program?

§1011.005 What definitions apply to the Medallion Program Regulations?

§1011.010 Who is eligible to apply for a HIRE Vets Medallion Award?

§1011.015 What are the different types of the HIRE Vets Medallion Awards?

Subpart B—Award Criteria

§1011.100 What are the criteria for the large employer HIRE Vets Medallion Award?

§1011.105 What are the criteria for the medium employer HIRE Vets Medallion Award?

§1011.110 What are the criteria for the small employer HIRE Vets Medallion Award?

§1011.115 Is there an exemption for certain large employers from the dedicated human resources professional criterion for the large employer platinum HIRE Vets Medallion Award?

§1011.120 Under what circumstances will VETS find an employer ineligible to receive a HIRE Vets Medallion Award for a violation of labor law?

Subpart C—Application Process

§1011.200 How will VETS administer the HIRE Vets Medallion Award process?

§1011.205 What is the timing of the HIRE Vets Medallion Award process?

§1011.210 How often can an employer receive the HIRE Vets Medallion Award?

§1011.215 How will the employer complete the application for the HIRE Vets Medallion Award?

§1011.220 How will VETS verify a HIRE Vets Medallion Award application?

§1011.225 Under what circumstances will VETS conduct further review of an application?

§1011.230 Under what circumstances can VETS deny or revoke an Award?

Subpart D—Fees and Caps

§1011.300 What are the application fees for the HIRE Vets Medallion Award?

§1011.305 May VETS set a limit on how many applications will be accepted in a year?

Subpart E—Design and Display

§1011.400 What does a successful applicant receive?

§1011.405 What are the restrictions on display and use of the HIRE Vets Medallion Award?

Subpart F—Requests for Reconsideration

§1011.500 What is the process to request reconsideration of a denial or revocation?

Subpart G—Record Retention

§1011.600 What are the record retention requirements for the HIRE Vets Medallion Award?

Authority: Division O, Pub. L. 115-31, 131 Stat. 135.

Subpart A—Introduction to the Regulations for the HIRE Vets Act**§1011.000 What is the HIRE Vets Medallion Program?**

The HIRE Vets Medallion Program is a voluntary employer recognition program administered by the Department of Labor’s Veterans’ Employment and Training Service. Through the HIRE Vets Medallion Program, The Department of Labor solicits voluntary applications from employers for the HIRE Vets Medallion Award. The purpose of this Award is to recognize efforts by applicants to recruit, employ, and retain veterans and to provide services supporting the veteran community.

§1011.005 What definitions apply to the Medallion Program Regulations?

Active Duty in the United States National Guard or Reserve means active duty as defined in 10 U.S.C. 101(d)(1).

Dedicated Human Resources Professional means either a full-time professional or the equivalent of a full-time professional dedicated exclusively to supporting the hiring, training, and retention of veteran employees. Two half-time professionals, for example, are equivalent to one full-time professional.

Employee means any individual for whom the employer furnishes an IRS Form W-2, excluding temporary workers.

Employer means any person, institution, organization, or other entity that pays salary or wages for work performed or that has control over employee opportunities, except for the Federal Government or any State or foreign government. For the purposes of this regulation, VETS will recognize employers based on the Employer Identification Number, as described in 26 CFR 301.7701-12, used to furnish an IRS Form W-2 to an employee. However, in the case of an agent designated pursuant to 26 CFR 31.3504-1, a payor designated pursuant to 26 CFR 31.3504-2, or a Certified Professional Employer Organization recognized pursuant to 26 U.S.C. 7705, the employer shall be the common law employer, client, or customer, respectively, instead of the entity that furnishes the IRS Form W-2.

Human Resources Veterans' Initiative means an initiative through which an employer provides support for hiring, training, and retention of veteran employees.

Post-secondary education means post-secondary level education or training courses that would be acceptable for credit towards at least one of the following: associates or bachelor's degree or higher, any other recognized post-secondary credential, or an apprenticeship.

Salary means an employee's base pay.

Temporary worker means any worker hired with the intention that the worker be retained for less than one year and who is actually retained for less than one year.

Veteran has the meaning given such term under 38 U.S.C. 101.

VETS means the Veterans' Employment and Training Service of the Department of Labor.

§1011.010 Who is eligible to apply for a HIRE Vets Medallion Award?

All employers who employ at least one employee are eligible to apply for a HIRE Vets Medallion Award. To qualify for a HIRE Vets Medallion Award, an employer must satisfy all application requirements.

§1011.015 What are the different types of the HIRE Vets Medallion Awards?

(a) There are three different categories of the HIRE Vets Medallion Award:

- (1) *Large Employer Awards* for employers with 500 or more employees.
- (2) *Medium Employer Awards* for employers with more than 50 but fewer than 500 employees.
- (3) *Small Employer Awards* for employers with 50 or fewer employees.
- (4) The correct category of Award is determined by the employer's number of employees as of December 31 of the year prior to the year in which the employer applies for an Award.

(b) Within each Award category, there are two levels of Award:

- (1) A Gold Award; and
- (2) A Platinum Award.

Subpart B—Award Criteria

§1011.100 What are the criteria for the large employer HIRE Vets Medallion Award?

(a) *Gold Award.* To qualify for a large employer gold HIRE Vets Medallion Award, an employer must satisfy all of the following criteria:

- (1) The employer is a large employer as specified in §1011.015 of this part;
- (2) The employer is not found ineligible under §1011.120 of this part;
- (3) Veterans constitute not less than 7 percent of all employees hired by such employer during the prior calendar year;
- (4) The employer has retained not less than 75 percent of the veteran employees hired during the calendar year preceding the preceding calendar year for a period of at least 12 months from the date on which the employees were hired;
- (5) The employer has established an employee veteran organization or resource group to assist new veteran employees with integration, including coaching and mentoring; and
- (6) The employer has established programs to enhance the leadership skills of veteran employees during their employment.

(b) *Platinum Award.* To qualify for a large employer platinum HIRE Vets Medallion Award, an employer must satisfy all of the following criteria:

- (1) The employer is a large employer as specified in §1011.015 of this part;
- (2) The employer is not found ineligible under §1011.120 of this part;
- (3) Veterans constitute not less than 10 percent of all employees hired by such employer during the prior calendar year;

- (4) The employer has retained not less than 85 percent of the veteran employees hired during the calendar year preceding the preceding calendar year for a period of at least 12 months from the date on which the employees were hired;
- (5) The employer has established an employee veteran organization or resource group to assist new veteran employees with integration, including coaching and mentoring;
- (6) The employer has established programs to enhance the leadership skills of veteran employees during their employment;
- (7) The employer employs a dedicated human resources professional as defined in §1011.005 of this part to support hiring, training, and retention of veteran employees;
- (8) The employer provides each of its employees serving on active duty in the United States National Guard or Reserve with compensation sufficient, in combination with the employee's active duty pay, to achieve a combined level of income commensurate with the employee's salary prior to undertaking active duty; and
- (9) The employer has a tuition assistance program to support veteran employees' attendance in postsecondary education during the term of their employment.

§1011.105 What are the criteria for the medium employer HIRE Vets Medallion Award?

- (a) *Gold Award.* To qualify for a medium employer gold HIRE Vets Medallion Award, an employer must satisfy all of the following criteria:

- (1) The employer is a medium employer per §1011.015 of this part;
- (2) The employer is not found ineligible under §1011.120 of this part;

(3) The employer has achieved at least one of the following:

(i) Veterans constitute not less than 7 percent of all employees hired by such employer during the prior calendar year; or

(ii) The employer has achieved both of the following:

(A) The employer has retained not less than 75 percent of the veteran employees hired during the calendar year preceding the preceding calendar year for a period of at least 12 months from the date on which the employees were hired; and

(B) On December 31 of the year prior to the year in which employer applies for the HIRE Vets Medallion Award, at least 7 percent of the employer's employees were veterans; and

(4) The employer has at least one of the following forms of integration assistance:

(i) The employer has established an employee veteran organization or resource group to assist new veteran employees with integration, including coaching and mentoring; or

(ii) The employer has established programs to enhance the leadership skills of veteran employees during their employment.

(b) *Platinum Award.* To qualify for a medium employer platinum HIRE Vets Medallion Award, an employer must satisfy all of the following criteria:

(1) The employer is a medium employer as specified in §1011.015 of this part;

(2) The employer is not found ineligible under §1011.120 of this part;

(3) The employer has achieved at least one of the following:

- (i) Veterans constitute not less than 10 percent of all employees hired by such employer during the prior calendar year; or
- (ii) The employer has achieved both of the following:
 - (A) The employer has retained not less than 85 percent of the veteran employees hired during the calendar year preceding the preceding calendar year for a period of at least 12 months from the date on which the employees were hired; and
 - (B) On December 31 of the year prior to the year in which employer applies for the HIRE Vets Medallion Award, at least 10 percent of the employer's employees were veterans;
- (4) The employer has the following forms of integration assistance:
 - (i) The employer has established an employee veteran organization or resource group to assist new veteran employees with integration, including coaching and mentoring; and
 - (ii) The employer has established programs to enhance the leadership skills of veteran employees during their employment; and
- (5) The employer has at least one of the following additional forms of integration assistance:
 - (i) The employer has established a human resources veterans' initiative;
 - (ii) The employer provides each of its employees serving on active duty in the United States National Guard or Reserve with compensation sufficient, in combination with the employee's active duty pay, to achieve a combined

level of income commensurate with the employee's salary prior to undertaking active duty; or

- (iii) The employer has a tuition assistance program to support veteran employees' attendance in postsecondary education during the term of their employment.

§1011.110 What are the criteria for the small employer HIRE Vets Medallion Award?

- (a) *Gold Award.* To qualify for a small employer gold HIRE Vets Medallion Award, an employer must satisfy all of the following criteria:

- (1) The employer is a small employer as specified in §1011.015 of this part;
- (2) The employer is not found ineligible under §1011.120 of this part; and
- (3) The employer has achieved at least one of the following:

- (i) Veterans constitute not less than 7 percent of all employees hired by such employer during the prior calendar year; or

- (ii) The employer has achieved both of the following:

- (A) The employer has retained not less than 75 percent of the veteran employees hired during the calendar year preceding the preceding calendar year for a period of at least 12 months from the date on which the employees were hired; and

- (B) On December 31 of the year prior to the year in which employer applies for the HIRE Vets Medallion Award, at least 7 percent of the employer's employees were veterans.

- (b) *Platinum Award.* To qualify for a small employer platinum HIRE Vets Medallion Award, an employer must satisfy all of the following criteria:

- (1) The employer is a small employer as specified in §1011.015 of this part;
- (2) The employer is not found ineligible under §1011.120 of this part;
- (3) The employer has achieved at least one of the following:
 - (i) Veterans constitute not less than 10 percent of all employees hired by such employer during the prior calendar year; or
 - (ii) The employer has achieved both of the following:
 - (A) The employer has retained not less than 85 percent of the veteran employees hired during the calendar year preceding the preceding calendar year for a period of at least 12 months from the date on which the employees were hired; and
 - (B) On December 31 of the year prior to the year in which employer applies for the HIRE Vets Medallion Award, at least 10 percent of the employer's employees were veterans; and
- (4) The employer has at least two of the following forms of integration assistance:
 - (i) The employer has established an employee veteran organization or resource group to assist new veteran employees with integration, including coaching and mentoring;
 - (ii) The employer has established programs to enhance the leadership skills of veteran employees during their employment;
 - (iii) The employer has established a human resources veterans' initiative;
 - (iv) The employer provides each of its employees serving on active duty in the United States National Guard or Reserve with compensation sufficient, in combination with the employee's active duty pay, to achieve a combined

level of income commensurate with the employee's salary prior to undertaking active duty;

- (v) The employer has a tuition assistance program to support veteran employees' attendance in postsecondary education during the term of their employment.

§1011.115 Is there an exemption for certain large employers from the dedicated human resources professional criterion for the large employer platinum HIRE Vets Medallion Award?

Yes. Employers who employ 5,000 or fewer employees need not have a dedicated human resources professional to support the hiring and retention of veteran employees. An employer with 5,000 or fewer employees can satisfy the criterion at §1011.100(b)(7) by employing at least one human resources professional whose regular work duties include supporting the hiring, training, and retention of veteran employees.

§1011.120 Under what circumstances will VETS find an employer ineligible to receive a HIRE Vets Medallion Award for a violation of labor law?

- (a) Any employer with an adverse labor law decision, stipulated agreement, contract debarment, or contract termination, as defined in paragraphs (b) through (e) of this section, pursuant to either of the following labor laws, as amended, will not be eligible to receive an Award:
 - (1) Uniform Services Employment and Reemployment Rights Act (USERRA); or
 - (2) Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA);
- (b) For purposes of this section, an adverse labor law decision means any of the following, issued in the calendar year prior to year in which applications are solicited or the

calendar year in which applications are solicited up until the issuance of the Award, in which a violation of any of the laws in paragraph (a) is found:

- (1) A civil or criminal judgment;
- (2) A final administrative merits determination of an administrative adjudicative board or commission; or
- (3) A decision of an administrative law judge or other administrative judge that is not appealed and that becomes the final agency action.

- (c) For purposes of this section, a stipulated agreement means any agreement (including a settlement agreement, conciliation agreement, consent decree, or other similar document) to which the employer is a party, entered into in the calendar year prior to the year in which applications are solicited or the calendar year in which applications are solicited up until the issuance of the Award, that contains an admission that the employer violated any of the laws in paragraph (a).
- (d) For purposes of this section, a contract debarment means any order or voluntary agreement, pursuant to the laws listed in paragraph (a), that debars the employer from receiving any future federal contract. Employers shall be ineligible for an Award for the duration of time that the contract debarment is in effect.
- (e) For purposes of this section, a contract termination means any order or voluntary agreement, pursuant to the laws listed in paragraph (a), that terminates an existing federal contract prior to its completion. Employers shall be ineligible for the Award if this termination occurred in the calendar year prior to the year in which applications are solicited or the calendar year in which applications are solicited up until the issuance of the Award.

- (f) VETS may delay issuing an Award to an employer if, at the time of the Award is to be issued, VETS has credible information that a significant violation of one of the laws in paragraph (a) of this section may have occurred that could lead to an employer being disqualified pursuant to any of paragraphs (b) through (e) of this section.

Subpart C—Application Process

§1011.200 How will VETS administer the HIRE Vets Medallion Award process?

The Secretary of Labor will annually—

- (a) Solicit and accept voluntary applications from employers in order to consider whether those employers should receive a HIRE Vets Medallion Award;
- (b) Review applications received in each calendar year;
- (c) Notify such recipients of their Awards; and
- (d) At a time to coincide with the annual commemoration of Veterans Day—
 - (1) Announce the names of such recipients;
 - (2) Recognize such recipients through publication in the *Federal Register*; and
 - (3) Issue to each such recipient—
 - (i) A HIRE Vets Medallion Award; and
 - (ii) A certificate stating that such employer is entitled to display such HIRE Vets Medallion Award.

§1011.205 What is the timing of the HIRE Vets Medallion Award process?

VETS will review all timely applications that fall under any cap established in §1011.305 of this part to determine whether an employer should receive a HIRE Vets Medallion Award, and, if so, of what level.

- (a) *Performance period*—except as otherwise noted in §1011.120 of this part, only the employer's actions taken prior to December 31 of the calendar year prior to the calendar year in which applications are solicited will be considered in reviewing the award.
- (b) *Solicitation period*—VETS will solicit applications not later than January 31 of each calendar year for the HIRE Vets Medallion Award to be awarded in November of that calendar year.
- (c) *End of acceptance period*—VETS will stop accepting applications on April 30 of each calendar year for the Awards to be awarded in November of that calendar year.
- (d) *Review Period*—VETS will finish reviewing applications not later than August 31 of each calendar year for the Awards to be awarded in November of that calendar year.
- (e) *Selection of recipients*—VETS will select the employers to receive HIRE Vets Medallion Awards not later than September 30, of each calendar year for the Awards to be awarded in November of that calendar year.
- (f) *Notice of awards and denials*—VETS will notify employers who will receive HIRE Vets Medallion Awards not later than October 11, of each calendar year for the Awards to be awarded in November of that calendar year. VETS will also notify applicants who will not be receiving an Award at that time.

§1011.210 How often can an employer receive the HIRE Vets Medallion Award?

An employer who receives a HIRE Vets Medallion Award for one calendar year is not eligible to receive a HIRE Vets Medallion Award for the subsequent calendar year.

§1011.215 How will the employer complete the application for the HIRE Vets Medallion Award?

- (a) VETS will require all applicants to provide information to establish their eligibility for the HIRE Vets Medallion Award.
- (b) VETS may request additional information in support of the application for the HIRE Vets Medallion Award.
- (c) The chief executive officer, the chief human resources officer, or an equivalent official of each employer applicant must attest under penalty of perjury that the information the employer has submitted in its application is accurate.
- (d) Interested employers can access the application form via the HIRE Vets website accessible from <https://www.dol.gov/vets/>.
- (e) Applicants will complete the application form and submit it electronically.
- (f) Applicants who need a reasonable accommodation in accessing the application form, submitting the application form, or submitting the application fee may contact VETS at (202) 693-4700 or TTY (877) 889-5627 (these are not toll-free numbers).
- (g) Should the information provided on the application be deemed incomplete, VETS will attempt to contact the applicant. The applicant must respond with the additional information necessary to complete the application form within 5 business days or VETS will deny the application.

§1011.220 How will VETS verify a HIRE Vets Medallion Award application?

VETS will verify all information provided by an employer in its application to the extent that such information is relevant in determining whether or not such employer meets the criteria to receive a HIRE Vets Medallion Award or in determining the appropriate level of HIRE Vets Medallion Award for that employer to receive. VETS will verify this information by reviewing all information provided as part of the application.

§1011.225 Under what circumstances will VETS conduct further review of an application?

If at any time VETS becomes aware of facts that indicate that the information provided by an employer in its application was incorrect or that the employer does not satisfy the requirements at §1011.120, VETS may conduct further review of the application. As part of that review, VETS may request information and/or documentation to confirm the accuracy of the information provided by the employer in its application or to confirm that the employer is not ineligible under §1011.120. Depending on the result of the review, VETS may either deny or revoke the Award. If VETS initiates such review prior to issuing the Award, VETS will not be required to meet the timeline requirements in this part.

§1011.230 Under what circumstances can VETS deny or revoke an Award?

(a) *Denial of Award.* VETS may deny an Award for any of the following reasons:

- (1) The applicant fails to provide information and/or documentation as requested under §1011.225 of this part;
- (2) VETS determines that the chief executive officer, the chief human resources officer, or an equivalent official of the applicant falsely attested that the information on the application was true; or
- (3) The employer is ineligible to receive an Award pursuant to §1011.120 of this part.

(b) *Revocation of Award.* Once the HIRE Vets Medallion Award has been awarded, VETS may revoke the recipient's Award for the following reasons:

- (1) The HIRE Vets Medallion Award recipient fails to provide information and/or documentation as requested under §1011.225 of this part;

- (2) VETS determines that the chief executive officer, the chief human resources officer, or an equivalent official of the recipient falsely attested that the information on the application was true;
 - (3) The employer was ineligible to receive an Award pursuant to §1011.120 of this part; or
 - (4) The employer violated the display restrictions at §1011.405 of this part.
- (c) If VETS decides to deny or revoke an Award, it will provide the employer with notice of the Department's decision. An employer may request reconsideration of VETS' decision to deny or revoke an Award pursuant to §1011.500 of this part.

Subpart D—Fees and Caps

§1011.300 What are the application fees for the HIRE Vets Medallion Award?

- (a) The Act requires the Secretary to establish a fee sufficient to cover the costs associated with carrying out the HIRE Vets Medallion Program.
- (b) The table in this paragraph sets forth the fees an employer must pay to apply for the HIRE Vets Medallion Award. VETS will adjust the fees periodically according to the Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce and notify potential applicants of the adjusted fees.
 - (1) If a significant adjustment is needed to arrive at a new fee for any reason other than inflation, then a proposed rule containing the new fees will be published in the *Federal Register* for comment.
 - (2) VETS will round the fee to the nearest dollar.

Application Fees

Small Employer Fee	\$90.00
Medium Employer Fee	\$190.00
Large Employer Fee	\$495.00

(c) All applicants must submit the appropriate application processing fee for each application submitted. This fee is based on the fee table provided at §1011.300(b) of this part. Payment of this fee must be made electronically through the U.S. Treasury pay.gov system or an equivalent.

(d) Once a fee is paid, it is nonrefundable, even if the employer withdraws the application or does not receive a HIRE Vets Medallion Award.

§1011.305 May VETS set a limit on how many applications will be accepted in a year?

Yes, VETS may set a limit on how many applications will be accepted in any given year.

Subpart E—Design and Display

§1011.400 What does a successful applicant receive?

- (a) The Award will be in the form of a certificate and will state the year for which it was awarded.
- (b) VETS will also provide a digital image of the medallion for recipients to use, including as part of an advertisement, solicitation, business activity, or product.

§1011.405 What are the restrictions on display and use of the HIRE Vets Medallion Award?

It is unlawful for any employer to publicly display a HIRE Vets Medallion Award, in connection with, or as a part of, any advertisement, solicitation, business activity, or product—

- (a) for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression that the employer received the Award through the HIRE Vets Medallion Program, if such employer did not receive such Award through the HIRE Vets Medallion Program; or
- (b) for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression that the employer received the Award through the HIRE Vets Medallion Program for a year for which such employer did not receive such Award.

Subpart F—Requests for Reconsideration

§1011.500 What is the process to request reconsideration of a denial or revocation?

- (a) An applicant may file a request for reconsideration of the VETS' decision to deny or revoke a HIRE Vets Medallion Award or of VETS' decision as to the level of Award by mailing a request for reconsideration to the following address no later than fifteen business days after the date of VETS' notice of its decision. Requests for reconsideration must be sent to:

HIRE Vets Medallion Program
DOL VETS
200 Constitution Ave, NW
Room S1325
Washington, DC 20210

- (b) Requests for reconsideration pursuant to paragraph (a) of this section must contain the following:
 - (1) The employer name and identification number;

- (2) The reason for the request; and
 - (3) An explanation, accompanied by any necessary documentation to support its explanation, of why VETS' decision was incorrect.
- (c) VETS may request from the employer filing such request any additional evidence or explanation it finds necessary for reconsideration.
- (d) Within thirty business days after the later of the receipt of the request or the receipt of any additional evidence or explanation requested, VETS will issue a determination about whether to grant or deny the request.
- (e) No additional Department of Labor review is available.

Subpart G—Record Retention

§1011.600 What are the record retention requirements for the HIRE Vets Medallion Award?

Applicants must retain a record of all information used to support an application for the HIRE Vets Medallion Award for two years from the date of application.

J.S. Shellenberger,

Deputy Assistant Secretary for the

Veterans' Employment and Training Service,

U.S. Department of Labor.

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